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The Commonwealth of Massachusetts.

MANUAL

OF

AGRICULTURAL LAWS.

ISSUED BY
THE STATE BOARD OF AGRICULTURE, STATE HOUSE, BOSTON.
WILFRID WHEELER, SECRETARY.

COMPILED AND EDITED BY
R. EDWARDS ANNIN, JR., A.B.

1916.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
32 DERNE STREET.
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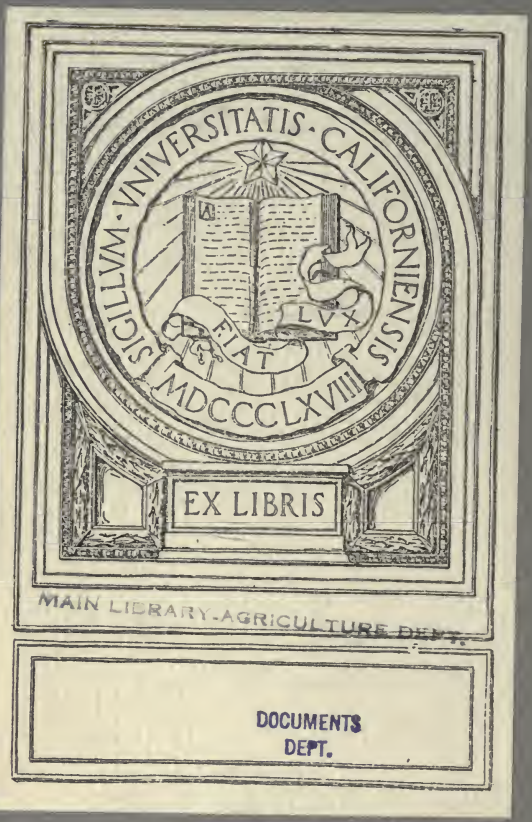

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INTRODUCTION.

"*Ignorantia legis neminem excusat.*" That every citizen must be presumed to know the law — though as a matter of fact not even the wisest jurist can know it in its entirety — seems at first blush to be a harsh rule. Further consideration, however, shows that it is the only possible rule for civilized society, and must be strictly adhered to. If ignorance of the law were once allowed as a defence it would of course be pleaded by the defendant in all cases, and in most cases the defendant would be able to prove his plea.

It is with the object of helping the citizens of Massachusetts, and especially the farmers, to know a small part of what they are already presumed to know as a whole that this little book has been compiled. It contains the Massachusetts laws dealing with agriculture as they stood at the prorogation of the General Court of 1916. To avoid duplication, however, certain statutes, though more or less closely related to agriculture, have not been included as they have been published in other compilations. Among these are the dairy statutes and decisions, published by the Dairy Bureau of the State Board of Agriculture; the "Forestry Laws" and those relating to the suppression of the gypsy and brown-tail moth, published by the State Forester; the laws relating to the suppression of cattle diseases, compiled by the Department of Animal Industry; the "Fish and Game Laws," issued by the Board of Commissioners on Fisheries and Game; and the "Weights and Measures Laws," issued by the Department of Weights and Measures. On account of the importance of the deer, pheasant and dog laws, in their relation to the farmer, however, these have been included, as well as the sections from the weights and measures act, fixing the weights of farm produce.

On account of the arrangement of the statutes according to subject the laws are not in chronological or numerical order. A particular statute of a certain year may be found by looking in the index of statutes, on page 173.

AMHERST

Digests of the most important decisions of the Supreme Judicial Court on the agricultural law have been also included in the book. In most cases the reporter's headnote has been used, though in a few cases it has seemed better to use an extract from the decision itself. The cases are indexed by both name and volume. A list of the officials charged with the enforcement of the various laws relating to agriculture has also been included, and will be found on page 169. — EDITOR.

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MANUAL OF AGRICULTURAL LAWS.

I. STATUTES PROVIDING STATE AID.

1. STATE BOARD OF AGRICULTURE.

REVISED LAWS, CHAPTER 89.

State Board of Agriculture, how constituted.

SECTION 1 (*as amended by 1902, 116, § 4, and G. A., 1916, 49, § 1*). The governor, ex officio, the president of the agricultural college, the state forester, the secretary of the state board of agriculture, the commissioner of animal industry, one person appointed by and from the state federation of county leagues and farm bureaus, one person appointed by and from the Massachusetts society for promoting agriculture, one person appointed by and from each agricultural society which receives an annual bounty from the commonwealth, and three other persons appointed by the governor, with the advice and consent of the council, shall constitute the state board of agriculture.

1852, 142, § 1. G. S. 16, § 1. 1866, 263, § 3. P. S. 20, § 1. 1894, 144. 1 Op. A. G. 406 (see page 140).

Tenure, Vacancies.

SECTION 2 (*as superseded by G. A., 1915, 114*). The term of office of the present members of the board shall expire on the first Tuesday of December of the last year of the term for which they were appointed, and the term of office of members hereafter appointed shall be three years, and one third of the members shall retire annually on the first Tuesday of December, except that appointments to fill vacancies, other than those which occur from the expiration of terms, shall be made in the same manner as original appointments for the residue of the unexpired term.

1852, 142, §§ 1, 2. G. S. 16, § 2. P. S. 20, § 2. 1896, 254.

Meetings; Members to receive no Compensation.

SECTION 3. The board shall meet at the state house or at the agricultural college once in each year. No member shall

receive compensation, but his personal expenses incurred in the performance of his official duties shall be paid by the commonwealth.

1852, 142, § 4. G. S. 16, § 3. 1866, 263, § 2. P. S. 20, § 3.

Secretary and Clerks and their Salaries.

SECTION 4 (*as amended by 1911, 186; G. A., 1915, 250; G. A., 1916, 46, § 2*). The board may appoint, and prescribe the duties of, a secretary, who shall receive an annual salary of three thousand dollars, and who, with the approval of the board, may employ a first clerk at an annual salary of eighteen hundred dollars, and may annually expend for other clerical service a sum not exceeding five thousand dollars. The secretary may arrange for lectures before the board, and may issue for general distribution such publications as he considers best adapted to promote the interests of agriculture; but the expense of such lectures and publications, unless otherwise provided for, shall be paid out of the appropriation for the dissemination of useful information in agriculture by the board.

1852, 142, § 4. Res. 1854, 72. Res. 1859, 46. G. S. 16, § 4. 1862, 164. 1865, 243. 1867, 167, § 4. 1869, 96, § 2. 1877, 377, § 9. 1879, 235. 1881, 264. P. S. 20, § 4. 1883, 184. 1884, 66. 1887, 245. 1891, 300. 1892, 143. 1893, 130. 1898, 459.

General Agent of Dairy Bureau.

SECTION 5 (*as amended by 1905, 155; 1907, 401*). The salary of the general agent of the dairy bureau of the state board of agriculture shall be eighteen hundred dollars a year, to be so allowed from the first day of January in the year nineteen hundred and seven.

1891, 412, § 6. 1900, 368.

Duties of Board.

SECTION 6. The board shall investigate subjects relating to improvement in agriculture, and may take and hold in trust gifts or bequests to it for promoting agricultural education or the general interests of husbandry.

1852, 142, § 3. G. S. 16, § 5. P. S. 20, § 6.

Board to fix Days for Annual Meetings of Agricultural Societies, etc.

SECTION 7. It may fix the days on which the agricultural societies shall commence their exhibitions, may prescribe forms

for and regulate their returns and shall furnish to their secretaries the necessary blanks to secure uniform and reliable statistics. The secretary of the board shall, in each year, cause to be made and published for distribution an abstract of their returns.

1847, 69, § 4. 1853, 127, § 2. 1866, 189, § 3.
1852, 142, § 4. G. S. 16, §§ 6, 8. P. S. 20, §§ 7, 9.

Reports to General Court.

SECTION 8 (*as affected by 1905, 211*). The board shall annually, on or before the third Wednesday of January, submit to the general court a detailed report of its transactions, with such recommendations and suggestions as the interests of agriculture may require.

1852, 142, § 4. G. S. 16, § 7. P. S. 20, § 10.

Appointment of Agents.

SECTION 9. The secretary may appoint agents, who shall visit the towns in the commonwealth to inquire into the methods and needs of practical husbandry, ascertain the adaptation of agricultural products to soil, climate and markets, encourage the establishment of farmers' clubs, agricultural libraries and reading rooms, disseminate useful information in agriculture by lectures or otherwise, and annually in October make detailed reports to him.

1859, 203, § 1. G. S. 16, § 9. P. S. 20, § 10.

Board of Overseers of Agricultural College.

SECTION 10. The board shall be a board of overseers of the Massachusetts agricultural college, with powers and duties to be defined by the governor and council, but such powers and duties shall not control the action of the trustees of said college or be inconsistent with the provisions of chapter two hundred and twenty of the acts of the year eighteen hundred and sixty-three.

1866, 263, § 1. P. S. 20, § 5.

Dairy Bureau.[1]

Dairy Bureau; Appointment, Duties.

Section 11 (*as amended by G. A., 1916, 46, § 1*). The dairy bureau of the board of agriculture shall consist of three members of said board, one of whom shall annually, before the first day of July, be appointed by the governor, with the advice and consent of the council, for a term of three years, or for such shorter term as he may continue a member of the board. The governor may, at any time, terminate the service of any member of said bureau, and thereupon, or upon any member thereof ceasing to be a member of the board, he may appoint another member in his place. Each member of such bureau shall receive five dollars for each day of actual service and his travelling expenses, which shall be paid by the commonwealth out of the fund provided for in the following section. The bureau, under the general direction of the board of agriculture, shall inquire into the methods of making butter and cheese in creameries or cheese factories, investigate all dairy products and imitation dairy products bought or sold within the commonwealth, enforce the laws for the manufacture, transfer and sale thereof, and shall take such action as will tend to produce a better quality thereof and improve the dairy industry. The secretary of the board of agriculture shall be the executive officer and secretary of the bureau, subject to its control and direction.

1891, 412, §§ 7, 11. 1892, 139.

Expenditures authorized; Annual Report.

Section 12 (*as amended by 1908, 416, § 1*). The bureau may expend not more than eight thousand dollars annually in its work, and it may co-operate with the state board of health and with inspectors of milk, but it shall not interfere with the duties of such board or officers. It shall annually, before the fifteenth day of January, report to the general court in detail the number of agents, assistants, experts and chemists employed by it, with their expenses and disbursements, of all investigations made by it, of all cases prosecuted with the results thereof, and other information advantageous to the dairy industry.

1891, 412, §§ 8, 10. 1895, 214.

[1] For complete dairy laws and decisions, see "Dairy Laws," published by the Dairy Bureau of the State Board of Agriculture.

Bureau to have Access to Places where Dairy Products are sold, etc.; to prosecute Violations of Law.

SECTION 13. The bureau and its agents and assistants shall have access to all places of business, factories, buildings, carriages and cars used in the manufacture, transportation or sale of dairy products or imitations thereof, and to all vessels and cans used in such manufacture and sale, and shall have the authority given to the state board of health or its officers, or to inspectors of milk, to enforce and prosecute violations of all laws relating to dairy products or imitations thereof. Whoever hinders, obstructs or in any way interferes with an officer or duly authorized agent of the dairy bureau in the performance of his duty shall be punished by a fine of one hundred dollars for the first offence and of two hundred dollars for each subsequent offence, which shall be payable into the treasury of the commonwealth.

1891, 412, §§ 9, 12. 1894, 280, § 5.

2. AGRICULTURAL AND HORTICULTURAL SOCIETIES.

REVISED LAWS, CHAPTER 124.

Bounty from State.

SECTION 1 (*as amended by 1909, 133; 1912, 260; 1913, 240; 1914, 276*). Every incorporated agricultural society which was entitled to bounty from this commonwealth before the thirty-first day of December, in the year nineteen hundred and thirteen, and every other such society whose exhibition grounds and buildings are not within twenty-five miles of those of a society which was then entitled to bounty, and which has raised by contribution of individuals and holds, as a capital appropriated to its uses, one thousand dollars, invested in an interest bearing public or private security or in real estate, buildings and appurtenances for its use and accommodation, shall, except when otherwise determined by the state board of agriculture as provided in section four, be entitled to receive annually in August from the commonwealth, two hundred dollars, and in that proportion for any greater amount so contributed and put at interest or invested; but no society shall receive a larger amount in one year than it has awarded and paid in premiums during the year last preceding, or otherwise expended for the encouragement and improvement of agriculture, with the approval of the state board of agriculture, nor, in any event, more than six

hundred dollars. If there is only one incorporated agricultural society in any county, it shall be entitled to receive said bounty notwithstanding its exhibition grounds and buildings are within twenty-five miles of a society entitled to said bounty; and, after having received said bounty, it shall not be deprived of the right to receive the same by reason of the subsequent incorporation of another society within the same county.

1818, 114, §§ 1, 2. R. S. 42, §§ 1, 2. 1842, 31. 1852, 246. G. S. 66, § 1. 1866, 189, § 1. 1870, 258. 1881, 285.

Acts of 1912, 260, as amended by 1914, 209.

Bounties for Encouragement of Agriculture, etc.

Every incorporated agricultural society which is entitled to receive a bounty under section one of chapter one hundred and twenty-four of the Revised Laws, as amended by chapter one hundred and thirty-three of the acts of the year nineteen hundred and nine, shall be entitled to receive annually in August from the commonwealth, in addition to the sum which it is entitled to receive under the said section, four hundred dollars for the following purposes: — Two hundred dollars to be distributed in premiums to children and youths under eighteen years of age for the encouragement of horticulture, agriculture and domestic manufactures, subject to the discretion of each society drawing bounty; and two hundred dollars in general premiums; but no society shall receive a larger sum in addition to the bounty to which it is entitled under the said section than it shall have expended in the year last preceding in premiums, in excess of the sum to which it is entitled under the said section; nor in the case of the sum set apart in this act for premiums to children and youths a larger sum than it shall have expended for such premiums.

Revised Laws, Chapter 124.

Bounty to Poultry Associations.

Section 2.[1] The state board of agriculture may set aside from the bounty allowed by the commonwealth to an incorporated agricultural society such amount as may be recommended by the delegate who represents such society on said board, and it shall be devoted solely to the premium list of such chartered poultry association as said delegate may recommend, and upon such conditions as the board of agriculture may determine. 1895, 391.

[1] See poultry premium bounty bill, page 21.

Societies claiming Bounty to file Certificate.

SECTION 3 (*as amended by 1913, 213, § 1*). A society which claims bounty shall annually, on or before the tenth day of December, file in the office of the secretary of the board of agriculture, a certificate signed by its president and treasurer, stating under oath the amount so contributed which it holds at interest or invested, as a capital stock; and also such other returns of its financial affairs as the board of agriculture may require, upon a blank to be furnished by the secretary of said board to the treasurer of said society.

1814, 114, § 3. R. S. 42, § 3. 1847, 69, § 1. 1852, 142, § 4. 1853, 127, § 1. G. S. 66, § 2. P. S. 114, § 2. 1891, 124.

Amount of Bounty. State Board may withhold Same.

SECTION 4. The amount of bounty to which a society is entitled for any year shall be ascertained by the certificate last filed by it under the provisions of the preceding section. But a society shall not receive bounty in any year, if the state board of agriculture, having first given to it full opportunity to be heard relative to its financial affairs and general management, so determines by a two-thirds vote of the whole number of its members present at its annual meeting, and by its secretary notifies the treasurer and receiver general thereof on or before the first day of September in such year.

1847, 69, § 2. G. S. 66, § 3. 1881, 285. P. S. 114, § 3.

Rules for Distribution of Bounty.

SECTION 5. A society which receives bounty shall make such rules for the distribution thereof as shall, in its opinion best promote the improvement of agriculture; subject, however, to the restrictions of sections eight to twelve, inclusive.

1865, 90. P. S. 114, § 4.

Sale or Mortgage of Property regulated.

SECTION 6 (*as amended by 1907, 189*). A society which has received or may receive a bounty from the commonwealth shall not sell or mortgage the whole or any portion of its real estate unless so authorized by a vote of two thirds of those members of such society who are present and voting at a meeting called for the purpose, approved by the state board of agriculture, after notice to parties interested and a hearing.

1890, 274.

Annual Returns.

SECTION 7 (*as amended by 1913, 213, § 2*). Every such society shall annually, on or before the tenth day of December, make a full return of its doings, signed by its president and secretary, to the secretary of the state board of agriculture, containing a statement of all expenditures, of the nature of the encouragement proposed by the society, the objects for which its premiums have been offered and the persons to whom they have been awarded, all reports of committees and all statements of experiments and cultivation which are regarded by the president and secretary as worthy of publication, with such general observations relative to the state of agriculture and manufactures in the commonwealth as it may consider useful. The return shall be so marked that the passages which are considered by such officers most worthy of public notice, study and application may be easily distinguished.

1818, 114, § 4. R. S. 42, § 4. 1845, 111, § 1. 1847, 69, § 1. 1852, 142, § 4. 1853, 127, § 1. G. S. 66, § 5. 187[illegible], 182. P. S. 114, § 5.

Forfeiture of Bounty.

SECTION 8. A society which neglects in any year to comply with the laws relating thereto or with the regulations of the state board of agriculture shall not be entitled to bounty in the succeeding year.

1845, 111, § 5. 1856, 181, § 2. 1847, 69, § 3. 1859, 232, § 5. 1853, 127, § 3. G. S. 66, § 6. P. S. 114, § 6.

Premiums to be offered by Societies.

SECTION 9. A society which receives said bounty shall offer annually by way of premiums, or shall otherwise apply, for the encouragement or improvement of agriculture or manufactures, an amount not less than the amount so annually received, and shall offer such premiums for agricultural experiments, and in such manner, as the state board of agriculture requires.

1818, 114, § 4. R. S. 42, § 4. G. S. 66, § 7. P. S. 114, § 7.

Premiums for Trees for Ship Timber.

SECTION 10. Every such society shall annually offer such premiums and encouragement for the raising and preservation of oaks and other forest trees as it considers proper and adapted

to perpetuate within the commonwealth an adequate supply of ship and other timber.

1818, 114, § 5. R. S. 42, § 6. G. S. 66, § 8. P. S. 114, § 8. 1901, 58.

Members.

SECTION 11. Every such society shall admit as members, upon equal terms, citizens of every town in the county in which it is located, and all premiums offered shall be subject to the competition of every citizen of such county.

1861, 180, § 1. P. S. 114, § 9.

Surplus to be at Interest.

SECTION 12. All money offered for premiums which is not awarded or paid shall be placed at interest and added to the capital stock of the society.

1818, 114, § 4. R. S. 42, § 5. G. S. 66, § 9.

To what Societies Provisions apply.

SECTION 13. Sections one, three, four, five and seven to twelve, inclusive, except the proviso in section four authorizing the state board of agriculture to withhold bounty, shall not, except by special enactment, extend to an agricultural society incorporated for any territory less than a county.

1818, 114, § 6. R. S. 42, § 7. G. S. 66, § 10. 1881, 285. P. S. 114, § 11.

Cattle Shows regulated.

SECTION 14. The officers of such society may define and fix bounds of sufficient extent for the erection of its cattle pens and yards and for convenient passage ways to and about the same on the days of its cattle shows and exhibitions, and also for its ploughing matches and trials of working oxen; but they shall not occupy or include within such bounds the land of any person without his consent, nor obstruct travel on any public highway. No person shall be permitted to enter or pass within such bounds unless in conformity with the regulations of the officers of the society. Whoever, contrary to such regulations, and after notice thereof, enters or passes within the bounds so fixed, shall forfeit not more than five dollars.

1820, 49, § 1. R. S. 42, §§ 8–10. 1847, 69, § 5. G. S. 66, §§ 11–13. P. S. 114, §§ 12–14.

Commonwealth *v.* Ruggles, 6 Allen, 588 (see page 168).

Powers of Marshals.

SECTION 15. The officers of such society may appoint a sufficient number of suitable inhabitants of the county to act as marshals at cattle shows and exhibitions. Such marshals shall have the powers of constables in relation to the preservation of the public peace and the service and execution of criminal process within the respective towns in which such shows and exhibitions are held, and such process may be directed to them accordingly; and they shall exercise their office from twelve o'clock at noon of the day preceding the commencement of such shows and exhibitions until twelve o'clock at noon of the day succeeding the termination thereof, and no longer.

1820, 49, § 2. R. S. 42, § 11. G. S. 66, § 14. P. S. 114, § 15.

Commonwealth *v.* Ruggles, 6 Allen, 588 (see page 168).

Assignment of Police at Exhibitions.

SECTION 16. Upon the application of the president of an incorporated agricultural or horticultural society to the authorities of a city or town in which an exhibition of such society is to be held, said city or town authorities shall assign for special service at such exhibition as many police officers or constables as may be necessary to preserve the peace and enforce the law at such exhibition. 1892, 180.

Rules for ascertaining Amount of Premium Crops.

SECTION 17. The state board of agriculture may prescribe rules to societies for uniform modes of ascertaining the product of crops entered for premium.

1862, 24. P. S. 114, § 16.

Premiums for Experiments.

SECTION 18. Every such society may offer and pay premiums for experiments in the cultivation of crops or in the raising of domestic animals for farm purposes, and no regulation of the state board of agriculture to the contrary shall be valid.

1859, 232, § 4. 1881, 285. P. S. 114, § 17.

Formation of a Corporation. Powers.

SECTION 19. Ten or more persons in any county, city or town, who by agreement in writing associate for the purpose of encouraging agriculture or horticulture, or for improving and

ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein, may form a corporation under the provisions of chapter one hundred and twenty-five, and may hold real and personal estate not exceeding ten thousand dollars in value.

1853, 312. G. S. 66, § 17. P. S. 114, § 18. 1897, 496, § 8.

Farmers' Clubs to receive Publications, etc.

SECTION 20. Farmers' clubs which are organized and are holding regular meetings shall, upon application made annually in November to the secretary of the state board of agriculture, receive copies of its report and of its other publications, in proportion to the number of their members and to the applications so made. A club which receives such copies shall annually in October make returns to said secretary of its agricultural experiments and of the reports of its committees.

1859, 203, § 2. G. S. 66, § 18. P. S. 114, § 19.

Preservation of Peace.

SECTION 21. Every such society or farmers' club may establish such regulations, not inconsistent with law, as it may consider necessary and expedient for the preservation of peace and good order or for the protection of its interests at its regular or annual meetings, shows, fairs or exhibitions, and shall cause at least five copies of such regulations to be posted in public places on its grounds not less than forty-eight hours before the time of holding each meeting.

1861, 127, § 1. P. S. 114, § 20.

Commonwealth *v.* Ruggles, 6 Allen, 588 (see page 168).

Booths, etc., Gaming, etc., prohibited.

SECTION 22. No person shall, during the time of holding a cattle show, fair or exhibition or meeting of a farmers' club, without the consent of the authorities having charge of the same, establish within one-half mile of the place of holding such show or meeting a tent, booth or vehicle of any kind for the purpose of vending any goods, wares, merchandise, provisions or refreshments. No person shall engage in gaming or horse racing or exhibit a show or play during the regular or stated time of holding a cattle show, agricultural fair or meeting of a farmers' club, or engage in pool selling, at or within half a

mile of the place of holding the same; but any person having his regular place of business within such limits shall not be hereby required to suspend his business.

1861, 127, § 2. 1877, 149, § 1. P. S. 114, § 21.

Penalty.

SECTION 23. Whoever violates any provisions of the preceding section, or a regulation established under the provisions of section twenty-one, shall forfeit not more than twenty dollars for such offence.

1861, 127, § 3. P. S. 114, § 22.

3. STATE ORNITHOLOGIST.

ACTS OF 1908, CHAPTER 245.

State Ornithologist, Appointment, etc.

SECTION 1. The state board of agriculture shall annually appoint some person, qualified by training and practical experience, to be state ornithologist, and he shall be responsible to the board for the performance of his duties as prescribed in this act.

Duties, etc.; Annual Report.

SECTION 2. It shall be the duty of the state ornithologist to investigate the distribution and food habits of the birds of the commonwealth; to determine, so far as possible, the relations of birds to outbreaks of insects and other animals; to experiment with a view of discovering the best methods of protecting fruits and crops from birds; and to serve the state board of agriculture and the people of the commonwealth in an advisory capacity in matters relating to the economic status of birds and legislation concerning them. He shall make an annual report to the state board of agriculture, and may issue special reports and bulletins as the exigencies of his work may require.

Compensation, Expenses, etc.

SECTION 3 (*as amended by 1912, 500, and 1914, 424*). The state ornithologist shall receive two thousand dollars annually for his services, and such allowance for necessary expenses, traveling or otherwise, as may be approved by the said board. He may purchase such supplies and apparatus and may employ such

assistance as may be reasonably necessary in carrying out his duties, subject to the approval of the said board; but the total amount to be expended under authority of this act shall not exceed twenty-five hundred dollars annually, including the salary of the ornithologist.

4. ENCOURAGEMENT OF POULTRY BREEDING.

Acts of 1909, Chapter 428.

Poultry Premium Bounties, Distribution, etc.

Section 1 (*as superseded by 1914, 298, § 1*). The sum of two thousand dollars shall be paid annually from the treasury of the commonwealth to the board of agriculture, which shall be known as a poultry premium bounty, and shall be used by the said board to encourage and improve the breeding of poultry. Said bounty shall be distributed by said board among the poultry associations hereinafter designated, during the month of August in each year, in proportion to the total amounts paid out by such associations, respectively, during the year ending June thirtieth, as hereinafter provided, in state premiums for such breeds and strains of poultry as the said board shall consider most worthy of encouragement, and the sum so distributed shall be used by such associations for the purpose of enabling them to hold annual exhibitions of poultry and for the payment of premiums only. The board may make such rules as it may deem suitable for carrying out the provisions of this act;[1] and any part of said bounty not distributed by the board in any year shall be repaid by it to the treasurer and receiver general.

Association not to receive Bounty unless, etc.

Section 2. No association shall be entitled to any part of said bounty unless it shall have been incorporated under the laws of the commonwealth for the purposes principally of holding exhibitions of poultry within the commonwealth.

Association to certify to Certain Facts under Oath.

Section 3 (*as superseded by 1914, 298, § 2*). No association shall be entitled to any part of said bounty unless it shall certify to the board of agriculture, not later than the tenth day of

[1] The rules and regulations governing the distribution of poultry bounty may be secured by addressing State Board of Agriculture, 136 State House, Boston.

July, under the oath of the president and treasurer of such association, that it has held an exhibition of poultry during the year ending June thirtieth, the amount paid in premiums by the association at such exhibition, and that the association is in need of aid to enable it to continue its exhibitions of poultry, together with such other facts as the board may request.

Term defined.

SECTION 4 (*added by 1914, 298, § 3*). For the purposes of this act the term "state premiums" shall mean all premiums described in the premium lists of said associations as being offered by the state board of agriculture through the association.

5. ENCOURAGEMENT OF AGRICULTURE AMONG CHILDREN AND YOUTHS.

ACTS OF 1913, CHAPTER 319, AS AMENDED BY ACTS OF 1914, CHAPTER 267.

Premiums for Encouragement of Agriculture.

SECTION 1. A sum not exceeding two thousand dollars may annually be expended by the state board of agriculture in premiums or otherwise, as the board shall determine, as rewards to children and youths under eighteen years of age for the purpose of stimulating interest and activity in agriculture. The board shall report annually to the legislature the names of the recipients of premiums or other rewards given hereunder, and the amount or value given to each.

6. ENCOURAGEMENT OF ORCHARDING.

ACTS OF 1910, CHAPTER 427.

Encouragement of Orcharding.

SECTION 1. There shall annually be allowed and paid out of the treasury of the commonwealth the sum of five hundred dollars, to be expended by the state board of agriculture for prizes for the best experiments in orcharding by private owners of orchards in Massachusetts, in giving demonstrations of spraying and of the care and management of orchards, or in such other manner as the board may deem best to encourage the orchard industry of the commonwealth.

7. SPECIAL EXHIBITIONS.

Acts of 1912, Chapter 411.

Encouragement of Agriculture.

Section 1. There shall annually be allowed and paid out of the treasury of the commonwealth the sum of two thousand dollars, to be expended by the state board of agriculture in the holding of special exhibitions of the products of special lines of agriculture, such as fruit growing, and corn growing, either by the board or by other organizations acting under the direction of the board and under such rules and regulations as the board may establish, in holding demonstrations of the best methods in agriculture, in payment of the salaries and expenses of agents who shall instruct the citizens of the commonwealth in the best methods of agriculture, in payment of prizes, or in such other manner as the board may deem best for the encouragement of agriculture: *provided*, that no part of the sum hereby appropriated shall be paid for exhibitions held by the agricultural societies receiving bounty from the commonwealth.

II. STATUTES PROVIDING FOR INSPECTION, REGULATION AND CONTROL.

1. NURSERY INSPECTION.

Acts of 1912, Chapter 507, as amended by General Acts of 1915, Chapter 161, and General Acts of 1916, Chapter 91.

State Nursery Inspector, Appointment.

Section 1. The state board of agriculture shall annually appoint a person qualified by scientific training and practical experience to be state nursery inspector, and he shall be responsible to the board for the performance of his duties as prescribed in this act. The said inspector may appoint such number of deputies, subject to the approval of the secretary of the state board of agriculture, as he may deem necessary or expedient.

Duties of Nursery Inspectors.

Section 2. It shall be the duty of the state nursery inspector, either personally or through his deputies, to inspect at least once each year all nurseries or places in the state where nursery stock is grown, and if no dangerous insects or fungous pests are found therein, a certificate to that effect shall be given by him. If such pests are found therein the owner of the stock shall take such measures to suppress the same as the state nursery inspector shall prescribe, and no certificate shall be given until the said inspector has satisfied himself by subsequent inspections that all such pests have been suppressed.

Agent's Licenses.

Section 3. Agents or other persons, excepting growers, who sell nursery stock shall make application to the state nursery inspector for an agent's license, and shall file with him the names and addresses of all persons or nurseries from which they purchase their stock. On receipt of such application, the state nursery inspector shall issue an agent's license, valid for one year, in such form and with such provisions as the state board of agriculture may prescribe. The license may be revoked at any time for failure to report the names and addresses of persons or nurseries from which stock is purchased, or for such other cause as may be deemed sufficient by the state nursery

inspector and the secretary of the state board of agriculture. All persons except growers, who sell, or who take or solicit orders for nursery stock shall be regarded as nursery agents for the purposes of this act.

Sale, etc., of Nursery Stock regulated.

SECTION 4. It shall be unlawful for any person, firm or corporation to sell, exchange, give away, deliver or ship within the state any trees, shrubs or plants commonly known as nursery stock unless such person, firm or corporation holds a grower's certificate or an agent's license, given under authority of this or of some preceding act, and unless a copy of such certificate or license, or such other evidence as the state board of agriculture may prescribe, shall accompany each car, box, bundle or package sold, exchanged, given away, delivered or shipped, and unless such certificate or license is dated within twelve months of the date of delivery or shipment; but this section shall not be taken to prohibit the selling, giving or exchanging of trees, plants or shrubs by persons who are not growers of or dealers in nursery stock.

Transportation of Nursery Stock, etc.

SECTION 5. Every person, firm, corporation, transportation company or common carrier, bringing into the state, or receiving for transportation to a point within the state from outside thereof, any car, box, bundle, package or consignment in any form, of living trees, shrubs or plants commonly known as nursery stock, shall immediately notify the state nursery inspector of the fact that such consignments have been received by him or it and give the name and address of the consignee in each case, together with such further report as may be required by the state nursery inspector under other provisions of this act. Failure on the part of any person, firm, corporation, transportation company or common carrier to conform to these requirements shall be deemed a misdemeanor, and shall be punishable by a fine as prescribed in section ten of this act.

Powers of State Nursery Inspector, etc.

SECTION 6. The state nursery inspector, either personally or through his deputies, shall have power to inspect at its point of destination all nursery stock coming into the state, and should such stock be found to be infested with injurious insects

or plant diseases he may cause it to be destroyed, or treated or returned to the consignor at the consignor's expense. The state nursery inspector, either personally or through his deputies, shall also have power to inspect all fruits brought into the state from any other state, province or country, grown on plants, shrubs or trees of kinds which also grow out of doors in this state, and, should such fruits be found to be infested with injurious insects or plant diseases liable to establish themselves in this state, he may cause such fruits to be destroyed, or treated or returned to the consignor at the consignor's expense.

Inspection, etc.

SECTION 7. The state nursery inspector, either personally or through his deputies, may inspect any orchard, field, garden, roadside or other place where trees, shrubs or other plants are growing out of doors, either on public or private land, which he may know or have reason to suspect is infested with the San José scale or any serious insect pest or plant disease, when in his judgment such pests or diseases are liable to cause financial loss to adjoining owners; and may serve written notice upon the owner, or owners, occupant or person in charge of trees, shrubs or other plants thus infested, of the presence of such pests or plant diseases, with a statement that they constitute a public nuisance, together with directions to abate the same, giving the methods of treatment for the abatement thereof, and stating a time within which the nuisance must be abated in accordance with the methods given in the notice. If the person or persons so notified shall refuse or neglect so to treat or destroy such trees, shrubs or other plants within the time prescribed, the state nursery inspector may cause such property to be so treated, or destroyed, and may employ all necessary assistants for this purpose, and such assistants shall have the right to enter upon any public or private property, if such entry is necessary for this purpose. Upon the completion of said treatment the state nursery inspector shall certify in writing to the owner or person in charge of the treated property the amount of the cost of such treatment, and if this be not paid to the secretary of the state board of agriculture within ninety days thereafter, the same may be recovered by suit, together with the costs of suit.

Appeal may be taken, etc.

SECTION 8. In case of objection to the action of the state nursery inspector or his deputy in executing any provision of this act, an appeal may be taken within ten days to the secretary of the state board of agriculture, and the appeal shall act as a stay of proceedings until it has been heard and decided by the secretary of the state board of agriculture, whose decision shall be final.

Powers of the Secretary of the State Board of Agriculture.

SECTION 9. When the secretary of the state board of agriculture has heard an appeal and has rendered a decision that the action of the state nursery inspector from which the appeal was taken is sustained, the state nursery inspector shall notify in writing the owner or owners, occupant or person in charge of the trees, shrubs, or other plants concerned, of the decision of the secretary, and shall direct him or them within a given time to treat or destroy the trees, shrubs or other plants in accordance with a method prescribed in the notice. If the person or persons so notified shall refuse or neglect so to treat or destroy such trees, shrubs or other plants within the time prescribed, the state nursery inspector may cause such property to be so treated, or destroyed, and the cost of the treatment to be collected as provided in section seven of this act.

Penalty.

SECTION 10. Any person, firm or corporation violating any provision of this act or offering any hindrance to the carrying out of any part thereof, shall be punished by a fine of not less than ten nor more than one hundred dollars for each offence.

Prosecutions, etc.

SECTION 11. All prosecutions under the provisions of this act shall be instituted by the secretary of the state board of agriculture and shall be directed by him, and all penalties and costs recovered for the violation of any provisions of this act shall be paid to the secretary of the state board of agriculture, and by him immediately paid into the state treasury, to be kept as a fund for the use of the state nursery inspector in the enforcement of this act and as an addition to the appropriation provided for in this act, to be drawn from the treasury in the same manner as said appropriation.

Powers of State Nursery Inspector.

SECTION 12. The state nursery inspector, with the approval of the secretary of the state board of agriculture, may prohibit for such periods and under such conditions as in his judgment may seem necessary, the delivery within the state of nursery stock from any other state, province or country when in his opinion such nursery stock is liable to be infested with insect pests or diseases not already present in this state. He, with the approval of the secretary of the state board of agriculture, shall have power to prescribe such general requirements as may be needed to carry out the provisions of this act, and may publish information about such insects and diseases as are concerned in this act.

Not to apply in Certain Cases.

SECTION 13. No provision of this act shall be considered as applying to the gypsy or brown tail moths or any stage thereof except upon places where nursery stock is grown and upon property immediately adjoining the same.

Season for Inspection.

SECTION 14. The state nursery inspector shall determine the season for inspecting nurseries and the forms of certificates to be given, but in no case shall he issue a certificate which shall continue in force after the first day of July next following the date of inspection. He, or any of his deputies, shall at all times have the right to enter any public or private grounds in the performance of any duty required by this act. The state nursery inspector shall receive five hundred dollars annually for his services under this act and his travelling and other expenses necessarily incurred in his service hereunder. Each of his deputies shall receive a sum to be fixed by the state nursery inspector with the approval of the secretary of the state board of agriculture, but which in no case shall exceed five dollars for each day's service required of him under this act, and his travelling and other expenses necessarily incurred in such service.

Expenditure.

SECTION 15. A sum not exceeding fifteen thousand dollars may be expended by the state board of agriculture in carrying out the provisions of this act.

Repeal.

SECTION 16. Chapter four hundred and forty-four of the acts of the year nineteen hundred and nine, and all other acts or parts of acts inconsistent herewith are hereby repealed; but this repeal shall not affect any act done or proceeding begun under any act hereby repealed.

Time of taking Effect.

SECTION 17. This act shall take effect on the first day of December, nineteen hundred and twelve.

Notification of Fruit Importations.

SECTION 18. Every person, firm or corporation, except common carriers, who shall receive, bring or cause to be brought into the state from such states, provinces or countries as may be designated by the secretary of the state board of agriculture, any fruits grown on plants, shrubs or trees of kinds which also grow out of doors in this state, shall immediately after the arrival thereof notify the state nursery inspector of such arrival and hold the same until they have duly been inspected.

2. APIARY INSPECTION.

ACTS OF 1911, CHAPTER 220.

Inspector of Apiaries, Appointment.

SECTION 1 (*as amended by G. A., 1916, 45 § 1*). The state board of agriculture shall annually appoint some person qualified by scientific training and practical experience in bee keeping to be state inspector of apiaries, who shall be responsible to said board for the performance of his duties under this act, and may be removed from office by said board for neglect of duty or malfeasance in office. The inspector of apiaries, with the approval of the said board, may appoint such deputies as he may deem necessary. The inspector shall receive five hundred dollars annually for his services under this act, and his travelling and other necessary expenses, and may expend for office assistance such amount as may be necessary. Each of his deputies shall receive a sum not exceeding five dollars for each day of service, to be fixed by the inspector of apiaries with the approval of the said board, and his travelling and other necessary expenses.

Duties of the Inspector, etc.

SECTION 2. It shall be the duty of the inspector of apiaries to prepare and distribute from time to time such literature upon the subject of bee culture, with the approval of the state board of agriculture, as may be deemed advisable. He shall also annually make or cause to be made through his deputies such inspection of the apiaries throughout the state as may be deemed necessary to discover and suppress all bee diseases of a contagious nature, and he shall have authority, with the approval of said board, to make and issue reasonable regulations for carrying out the provisions of this act.

Keeping of Bees prohibited in Certain Cases.

SECTION 3. No person shall keep a colony of bees affected with the disease known as foul brood, black brood, or with any other infectious or contagious disease harmful to honey bees in the egg, larval, pupal or adult stage, except as provided by section four of this act; and every bee keeper, when he becomes aware of the existence of such a disease among his bees, shall at once notify the inspector of apiaries of the existence of the same. Any person who, knowing that a contagious or infectious disease exists among his bees, sells, barters or gives away, or in any other way disposes of the same in whole or in part, or any product of the same, or any hive, super, frame, section or other appliance used about the diseased bees, in such manner as to cause the spread of the disease, shall, upon conviction before a court or justice, be liable to the penalties named in section nine of this act.

Diseased Bees to be held in Quarantine.

SECTION 4. The inspector of apiaries shall, upon the discovery of foul brood, black brood or other infectious or contagious disease, send to the owner of the diseased bees an order in writing that such bees shall be held in quarantine until such time as the same are released by a written permit from the inspector of apiaries, and bees so placed in quarantine shall not be removed from the premises of the owner under the penalties named in section nine of this act.

Instructions in Treatment of Diseased Bees.

SECTION 5. Upon the discovery of a case of foul brood, black brood, or other infectious or contagious disease in any apiary or colony, the inspector of apiaries or his deputies shall give such instructions to the owner or caretaker thereof as to the treatment of the diseased colonies as may be necessary. If upon subsequent inspection the disease is still found to exist in the apiary or colony, the inspector of apiaries or his deputies may cause the diseased colonies to be destroyed in such manner as to prevent the spread of the disease.

Regulations concerning Shipping or Transportation of Bees.

SECTION 6. No colony of bees shall be shipped or transported into the state for delivery to any consignee residing within the state from any state or foreign country having an inspector of apiaries or other officer charged with the duties commonly performed by an inspector of apiaries, unless said colony be accompanied by a certificate in writing from such officer, stating that he has inspected said colony and that it is free from infectious or contagious diseases. Whenever a colony of bees shall be shipped or transported into the state from any state or foreign country not having an inspector of apiaries or other officer charged with the duties commonly performed by an inspector of apiaries, the consignee shall, upon the receipt of said colony, forthwith notify the state inspector of apiaries of its receipt and the state inspector of apiaries shall forthwith inspect the same. No transportation company or common carrier shall accept for transportation into the state or shall deliver any colony of bees from a state or foreign country having an inspector of apiaries, or other officer charged with the duties commonly performed by an inspector of apiaries, to any consignee residing within the state, unless such colony is accompanied by a certificate of inspection as heretofore provided. No common carrier shall be liable for damages to the consignee or consignor for refusing to receive, transport or deliver such a colony when not accompanied by a certificate of inspection as above provided. Nothing in this section shall be construed to prevent the transportation or delivery of queen bees when not accompanied by brood or comb.

Inspector to have Access to Places where Bees are kept.

SECTION 7. For the purpose of enforcing this act the inspector of apiaries or his deputies shall have access, ingress and egress to and from all places where bees, bee products or supplies or appliances used in apiaries are kept.

Record to be kept of Apiaries visited.

SECTION 8. The inspector of apiaries shall keep a detailed record of the number and location of all apiaries visited by him or his deputies, the number and location of all colonies found diseased and the treatment thereof, and the expenditure incurred in the performance of his duties. He shall report to the state board of agriculture annually, and at such other times as the board may request, and his annual report shall be published in the annual report of the state board of agriculture.

Penalties.

SECTION 9. Any person convicted of the violation of any provision of this act shall be subject to a fine not exceeding ten dollars for the first offence, to a fine not exceeding twenty-five dollars for the second offence, and to a fine not exceeding fifty dollars for any subsequent offence.

Expenditures.

SECTION 10. A sum not exceeding two thousand dollars may annually be expended by the state board of agriculture in carrying out the provisions of this act.

3. COMMERCIAL FERTILIZERS.

ACTS OF 1911, CHAPTER 388.

Sale of Commercial Fertilizers.

SECTION 1. No commercial fertilizer shall be sold or offered or exposed for sale in this commonwealth without a plainly printed label accompanying it, displayed in the manner hereinafter set forth, and truly stating the following particulars: —

1. The number of pounds of the fertilizer sold or offered or exposed for sale.

2. The name, brand or trade-mark under which the fertilizer is sold, and, in the case of agricultural lime, its particular form.

3. The name and principal address of the manufacturer, importer or other person putting the fertilizer on the market in this commonwealth.

4. The minimum percentage of each of the following constituents which the fertilizer may contain: (*a*) nitrogen, (*b*) phosphoric acid soluble in distilled water, (*c*) available phosphoric acid, (*d*) total phosphoric acid, (*e*) potash soluble in distilled water; except that in the case of undissolved bone, untreated phosphate rock, tankage, pulverized natural manures, the ground seeds of plants, and wood ashes, when sold unmixed with other substances, the minimum percentage of total phosphoric acid therein may be stated in place of the percentages of soluble and available phosphoric acid; and except that in the case of agricultural lime the label shall truly state the following: (*a*) minimum and maximum percentage of total lime, (*b*) minimum and maximum percentage of total magnesia, (*c*) minimum percentage of lime and magnesia combined as carbonates, (*d*) minimum percentage of lime sulphate in gypsum or land plaster.

5. If any part of the nitrogen contained in the fertilizer is derived from pulverized leather, raw, roasted or steamed; or from untreated hair, wool waste, peat, garbage tankage, or from any inert material whatsoever, the label shall truly state the specific material or materials from which such part of the nitrogen is derived.

Label to be affixed.

SECTION 2. When any fertilizer is sold or offered or exposed for sale in packages, the label shall be affixed in a conspicuous place on the outside thereof. When any fertilizer, other than the product of gas-houses, known as gas-house lime, is offered or exposed for sale in bulk the label shall be affixed in a conspicuous place to the bin or other enclosure in which the fertilizer is contained but need not state the number of pounds thereof. And when any fertilizer other than gas-house lime aforesaid is sold in bulk, the label shall be affixed in a conspicuous place to the car or other vehicle in which the fertilizer is shipped or delivered and shall state the number of pounds thereof. When any fertilizer is sold in packages furnished by the purchaser the seller shall furnish the labels therefor.

Provisions of Label.

SECTION 3. The provisions of the printed label required by this act relating to the constituents contained in any fertilizer shall be known and recognized as the guaranteed analysis of such fertilizer, and the available phosphoric acid in basic phosphatic slag shall be stated in the label thereof on the basis of the results of an analysis by the Wagner Method, so-called, until such time as the Association of Official Agricultural Chemists of North America shall adopt a method of analysis for basic phosphatic slag, after which the available phosphoric acid shall be stated on the basis of an analysis by the method of said association.

Violation of Act.

SECTION 4. Any manufacturer, importer, or other person selling or offering or exposing for sale in this commonwealth a commercial fertilizer or brand of commercial fertilizer, any constituent part of which is of a smaller percentage than it is stated to be in the label of said fertilizer, and any manufacturer, importer, or other person selling or offering or exposing for sale in this commonwealth a fertilizer or brand of fertilizer with a label which is untrue in any particular, shall be deemed to have committed a violation of this act.

True Copy of Label to be filed.

SECTION 5. No manufacturer, importer, or other person shall sell or offer or expose for sale in this commonwealth any commercial fertilizer until he shall have filed with the director of the Massachusetts Agricultural Experiment Station a copy certified by him to be a true copy of the label required by this act, excepting the item as to the number of pounds, for every brand of fertilizer to be sold or offered or exposed for sale in this commonwealth, and shall have paid to the said director an annual analysis fee for every brand aforesaid as follows: eight dollars for nitrogen, eight dollars for phosphoric acid, eight dollars for potash contained or stated to be contained in any such brand of fertilizer, and twelve dollars for every brand of agricultural lime except gas-house lime. The certified copy of the label of every brand of fertilizer to be sold or offered or exposed for sale in this commonwealth shall be filed with, and the proper analysis fee for every such brand shall be paid to, the director of the Massachusetts Agricultural Experiment Station prior to

the first day of January of the calendar year in which the brand is to be sold or offered or exposed for sale. But should a manufacturer, importer, or other person desire in any year to sell or to offer or expose for sale in this commonwealth any brand of commercial fertilizer in respect of which the requirements of this section as to the filing of a copy of the label thereof and the payment of the analysis fee therefor have not been complied with before the first day of January of said year, the said manufacturer, importer or other person may offer or expose for sale and sell the said brand in this commonwealth upon filing a certified copy as aforesaid of the label thereof and paying the full analysis fee therefor. No agent or other person shall be obliged to file a copy of the label of, or pay an analysis fee for, any brand of fertilizer for which a certified copy of the label has been filed and the analysis fee has been paid by the manufacturer or importer of such brand.

Any manufacturer, importer, or other person filing with the director of the Massachusetts Agricultural Experiment Station a false copy of the printed label of any fertilizer or brand of fertilizer shall be deemed to have committed a violation of this act.

Certificate of filing Label.

SECTION 6. When both the certified copy of the label of any brand of fertilizer has been filed and the analysis fee therefor has been paid as provided in section five of this act, the director of the Massachusetts Agricultural Experiment Station shall issue or cause to be issued a certificate to that effect; and the certificate shall be deemed to authorize the sale in this commonwealth, in compliance with this act, of the brand of fertilizer for which the certificate is issued, up to and including the thirty-first day of December of the year for which it is issued.

Analysis.

SECTION 7. Every commercial fertilizer and brand of commercial fertilizer sold or offered or exposed for sale in this commonwealth shall be subject to analysis by the director of the Massachusetts Agricultural Experiment Station or by his duly designated deputy or deputies. And the said director is hereby authorized and it is made his duty to make or cause to be made in each year one or more analyses of every fertilizer and brand of fertilizer sold or offered or exposed for sale in this common-

wealth, and to collect the annual analysis fee provided for by section five of this act. The said director, his inspectors and deputies, are further authorized to enter upon any premises where any commercial fertilizer is sold or offered or exposed for sale to ascertain if the provisions of this act are complied with, and to take samples for analysis as provided for by this act. The analysis of all fertilizers shall be made by the methods adopted by the Association of Official Agricultural Chemists of North America, except that basic phosphatic slag may be analyzed by the Wagner Method, so-called, until a method of analysis therefor is adopted by said association. The said director shall have the right to publish or cause to be published in reports, bulletins, special circulars or otherwise, the results obtained by said analyses, and in connection therewith shall, in each case, state the cost of equivalent amounts of nitrogen, phosphoric acid and potash in unmixed materials when bought for cash on the market at retail. Said reports, bulletins, circulars, or other publications shall also contain such additional information in relation to the character, composition, value and use of the fertilizers analyzed as the said director in his discretion may see fit to include. The said director may at any time make or cause to be made for any person a free analysis of any commercial fertilizer or brand of commercial fertilizer sold or offered or exposed for sale in this commonwealth, but he shall not be obliged to make such free analysis, or to cause the same to be made, unless the samples therefor are taken and submitted in accordance with the rules and regulations which may be prescribed by him. The results of any analysis made in accordance with the provisions of this act, except a free analysis as aforesaid, shall be sent by the director to the person named in the printed label of the fertilizer analyzed at least fifteen days before any publication thereof.

Taking of Samples, etc.

SECTION 8. All samples of commercial fertilizers taken for analysis shall be of not less than substantially one and one-half pounds in weight, and every sample shall be taken, whenever the circumstances conveniently permit, in the presence of the person selling or offering or exposing for sale the fertilizer sampled, or of a representative of such person. Broken packages shall not be sampled, and all samples shall be taken from substantially ten per cent of the fertilizer to be sampled, except

that in the case of a fertilizer sold or offered or exposed for sale in bulk ten single samples shall be taken from as many different portions of the lot. All samples taken shall be thoroughly mixed and divided into two nearly equal samples, placed in suitable vessels and marked and sealed. Both shall be retained by the director, but one shall be held intact by him for the period of one year at the disposal of the person named in the label of the fertilizer sampled.

Penalty.

SECTION 9. Any person hindering or obstructing the director of the Massachusetts Agricultural Experiment Station, or any inspector or deputy of the said director, in the discharge of the authority or duty conferred or imposed by any provision of this act and any person violating any provision of sections one, two, three, four and five of this act shall be fined not less than fifty dollars and not more than two hundred dollars for each offence. It shall be the duty of the said director to see that the provisions of this act are complied with, and he may, in his discretion, prosecute or cause to be prosecuted any person violating any provision of this act. But no complaint based upon an analysis of samples shall be made for any such violation, if the samples were taken otherwise than as provided in this act. And no complaint shall be made for a failure of any fertilizer or brand of fertilizer to meet the guaranteed analysis thereof if the analysis of such fertilizer made by the director, or by his deputy or deputies, shows the amounts of the constituents thereof to be substantially equivalent to the percentages stated in the label of the fertilizer.

Fees.

SECTION 10. All fees collected by the director of the Massachusetts Agricultural Experiment Station under the provisions of this act shall be turned over by him to the treasurer of the said station, and the amounts received and disbursed shall be kept in a separate account, and shall be audited and reported, as are other moneys placed in charge of the trustees of the Massachusetts Agricultural College. The money collected under the provisions hereof shall be used under the authority of the said director to meet the expenses incurred in carrying out the provisions of the act, and should there be a surplus, the surplus shall be used in the Massachusetts Agricultural Experiment Station, under the authority of its director, for experiments and research relative to soils, fertilizers and manures.

Certain Terms defined.

SECTION 11. In this act unless the context or subject-matter otherwise requires,

"Agricultural lime" includes all the various forms of lime intended or sold for fertilizing purposes.

"Available phosphoric acid" means the sum of the soluble and reverted phosphoric acid, except that, as applied to basic phosphatic slag, the term "available phosphoric acid" shall mean that part of the phosphoric acid made soluble by the Wagner method, so-called, until such time as the Association of Official Agricultural Chemists of North America shall adopt a method for basic phosphatic slag, after which it shall mean that part of the phosphoric acid made soluble by the method of said association.

"Brand" means any commercial fertilizer distinctive by reason of name, trade-mark or guaranteed analysis, or by any method of marking.

"Commercial fertilizer" includes every natural or artificial manure containing nitrogen or phosphoric acid or potash or lime, except the excrements and litter from domestic animals when sold in their natural state; but dried or partly dried manure, pulverized or ground, shall be included as a commercial fertilizer.

"Copy" means certified copy.

"Fertilizer" means commercial fertilizer.

"Importer" means a person who procures for sale in this commonwealth commercial fertilizers made in other states or countries.

"Label" means printed label.

"Lime" means calcium oxide (Cao).

"Magnesia" means magnesium oxide (MgO).

"Packages" includes sacks and bags and all other receptacles.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Phosphoric acid" means phosphoric anhydrid (P_2O_5).

"Potash" means potassium oxide (K_2O).

Repeal.

SECTION 12. Sections eleven to seventeen inclusive of chapter fifty-seven of the Revised Laws and chapter two hundred and eighty-nine of the acts of the year nineteen hundred and seven are hereby repealed.

4. COMMERCIAL FEEDSTUFFS.

ACTS OF 1912, CHAPTER 527.

Sale and Analysis of Certain Foodstuff.

SECTION 1. In this act, unless the context otherwise requires: — The term "commercial feeding stuff" shall include all feeding stuff used for feeding live stock and poultry and containing not more than sixty per cent of water, except whole seeds or grains, and the unmixed meals made directly from the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kafir, and milo, whole hays, whole straws, unground cotton seed hulls and unground corn stover when unmixed with other materials.

The term "cattle feed" shall include all materials used for feeding live stock and poultry.

"Brand" shall mean any commercial feeding stuff or cattle feed distinctive by reason of name, trade-mark or guaranteed analysis or by any method of marking.

"Crude protein" shall mean the percentage of nitrogen multiplied by the factor six and twenty-five one hundredths.

"Copy" shall mean certified copy.

"Feeding stuff" shall mean commercial feeding stuff.

"Importer" shall mean a person who procures for sale or distribution in this commonwealth commercial feeding stuff or cattle feed from other states or countries.

"Label" shall mean printed label.

"Package" shall include sacks and bags, tins, boxes, jars, and similar receptacles.

"Person" shall include a corporation or partnership or two or more persons having a joint or common interest.

"Tag" shall mean printed tag.

Tag or Label to be attached to Packages.

SECTION 2. Every package, lot or parcel of commercial feeding stuff sold or offered or exposed or kept for sale or distributed within this commonwealth shall have affixed thereto in a conspicuous place, as hereinafter set forth, a tag or label containing a legible and plainly printed statement in the English language, clearly and truly certifying:

(*a*) the weight of the contents of the package, lot or parcel;

(*b*) the name, brand or trade-mark;

(*c*) the name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(*d*) the minimum per cent of crude protein;
(*e*) the minimum per cent of crude fat;
(*f*) the maximum per cent of crude fibre;
(*g*) the specific name of each ingredient used in its manufacture.

Tag to be affixed in a Conspicuous Place.

SECTION 3. When any feeding stuff is sold or offered, exposed or kept for sale or distributed in packages, the tag or label shall be affixed in a conspicuous place on the outside thereof. When any feeding stuff is offered, exposed or kept for sale in bulk, the tag or label shall be affixed in a conspicuous place on the bin or other enclosure in which the feeding stuff is contained, but need not state the number of pounds thereof. And when any feeding stuff is sold or distributed in bulk the label shall be affixed in a conspicuous place on the car or other vehicle in which the feeding stuff is shipped or delivered or distributed and shall state the number of pounds thereof. When any feeding stuff is sold in packages furnished by the purchaser the seller shall furnish the tags or labels therefor. The provisions of the printed tag or label required by this act relating to the constituents contained in any commercial feeding stuff shall be known and recognized as the guaranteed analysis of such feeding stuff.

Copy of the Tag or Label to be filed with the Director of the Massachusetts Experiment Station.

SECTION 4. Before any manufacturer, importer or other person shall sell, or offer, expose, or keep for sale, or distribute in this commonwealth any commercial feeding stuff, he shall file with the director of the Massachusetts agricultural experiment station, or his authorized deputy, for registration, a copy certified by him to be a true copy of the tag or label required by this act, excepting the item as to the number of pounds, for every brand of feeding stuff to be sold or offered, exposed or kept for sale or to be distributed in this commonwealth. But no agent or other person shall be obliged to file a copy of the tag or label of any brand of feeding stuff, a copy of which has been filed by the manufacturer or importer of such brand and for which a certificate of registration has been issued. No feeding stuff or brand of feeding stuff shall be sold or offered, exposed or kept for sale or distributed in this commonwealth until the tag or label therefor has been registered by the director of the Massachusetts agricultural experiment station, or his authorized deputy, and a certificate of such registration has been issued by him.

Certified Copy, etc.

SECTION 5. A certified copy of the tag or label required by this act shall be filed with the director of the Massachusetts agricultural experiment station, or his authorized deputy, for registration prior to the first day of September in each year for every brand of commercial feeding stuff to be sold or offered, exposed or kept for sale or to be distributed in this commonwealth during the year beginning with said first day of September. The said director or his authorized deputy may thereafter permit a manufacturer, importer or other person to file a copy of the tag or label of a brand of feeding stuff, and may register the same for said year in accordance with the rules and regulations which may be prescribed by the said director.

Tag or Label to be registered.

SECTION 6. When the certified copy of the tag or label of any brand of commercial feeding stuff has been filed as provided by this act, the director of the Massachusetts agricultural experiment station, or his authorized deputy, shall register such tag or label if he finds the same to be in accordance with the requirements of this act, and shall issue, or cause to be issued, a certificate of such registration, and the said certificate shall be deemed to authorize the sale in this commonwealth, in compliance with this act, of the brand of feeding stuff for which the certificate is issued, up to and including the thirty-first day of August of the year for which it is issued.

Misleading or Deceptive Tag prohibited.

SECTION 7. The director of the Massachusetts agricultural experiment station or his authorized deputy may refuse to register any commercial feeding stuff under a name, brand, or trademark which, in his opinion, would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which the feeding stuff is composed. The director or his said deputy may refuse to register more than one feeding stuff under the same name or brand, or to register any feeding stuff under a name or brand to the use of which the applicant for registration is not lawfully entitled. Should any feeding stuff be registered in this commonwealth and it be discovered afterward that any provision of this act was violated in obtaining such registration or that such registration is in any respect in violation of

any provision of this act, the director of the Massachusetts agricultural experiment station, and his authorized deputy, shall have power to cancel such registration and the certificate issued therefor. No manufacturer, importer, or other person shall sell or offer or expose or keep for sale or distribute in this commonwealth any commercial feeding stuff, registration whereof has been cancelled by the director or his authorized deputy.

Analysis, etc.

SECTION 8. Every commercial feeding stuff and cattle feed, or brand thereof, sold or offered, exposed or kept for sale or distributed in this commonwealth shall be subject to analysis by the director of the Massachusetts agricultural experiment station, or by his designated deputy or deputies, and the said director is hereby authorized and it is made his duty to make or cause to be made in each year one or more analyses of every brand of feeding stuff sold or offered, exposed or kept for sale or distributed in this commonwealth, and he is hereby given free access in person and by deputy to all places of business, mills, buildings, carriages, cars, vessels and other receptacles of whatsoever kind used in the manufacture, sale, storage or delivery of any feeding stuff or cattle feed in this commonwealth, or in the importation or transportation of any feeding stuff or cattle feed for sale or distribution in this commonwealth. The director and his deputies are further authorized to open any receptacle containing or supposed to contain any feeding stuff or cattle feed for sale or distribution as aforesaid, and to take samples for analysis, as provided by this act. The methods of analyses of all feeding stuffs and cattle feeds shall be those in force at the time by the Association of Official Agricultural Chemists of North America.

Rights of Director, etc.

SECTION 9. The said director shall have the right to publish or cause to be published in reports, bulletins, special circulars, or otherwise the results obtained by said analyses, and said reports, bulletins, circulars, or other publications shall contain such additional information in relation to the character, composition, value and use of the feeding stuffs or cattle feed analyzed as the director may, in his discretion, see fit to include. The said director, in his discretion, may at any time make or cause to be made for consumers a free analysis of any brand of feeding stuff

or cattle feed sold or offered or exposed or kept for sale or distributed in this commonwealth; but all samples for such free analysis shall be taken and submitted in accordance with the rules and regulations which may be prescribed by the director. The results of any analysis of a commercial feeding stuff made in accordance with the provisions of this act, except a free analysis as aforesaid, shall be sent by the director, at least fifteen days before any publication thereof, to the person named on the tag or label of the feeding stuff analyzed.

Samples to be taken, etc.

SECTION 10. All samples for analysis of any commercial feeding stuff or cattle feed shall be taken, whenever the circumstances conveniently permit, in the presence of at least one witness, and no action shall be maintained for a violation of the provisions of this act based upon an analysis of a sample taken from less than five separate original packages, unless there be less than five separate original packages in the lot, in which case parts of the official sample shall be taken from each original package. If the feeding stuff or cattle feed is in bulk, parts shall be taken from not less than five different places in the lot: *provided*, that this shall not exclude sampling from bulk when the feeding stuff or cattle feed is not exposed sufficiently to take parts from five different places, in which case parts shall be taken from as many places as practicable. All samples thus taken shall be placed in suitable vessels, marked and sealed. A part of each sample shall be held by the said director or his deputy at the disposal of the person named on the tag or label of the feeding stuff sampled for fifteen days after the results of the analysis have been reported as provided in section nine.

Selling of Mixed Stuffs prohibited.

SECTION 11. No commercial feeding stuff or cattle feed or brand thereof that has been mixed or adulterated with any substance or substances injurious to the health of live stock or poultry shall be sold or offered or exposed or kept for sale or distributed in this commonwealth.

Penalty for selling without Tag or Label.

SECTION 12. Any manufacturer, importer, or other person who shall sell or offer, expose or keep for sale, or distribute in this commonwealth, any commercial feeding stuff without the tag or

label required by this act, or with a tag or label that has not been registered, or with a tag or label the registration of which has been cancelled by the director of the Massachusetts agricultural experiment station or his authorized deputy, or who shall file with the said director or his authorized deputy for registration a false copy of the tag or label of any feeding stuff or brand of feeding stuff, or who shall impede, obstruct or hinder the director or any of his deputies in the discharge of the authority or duty conferred or imposed by any provision of this act, or who shall sell or offer, expose or keep for sale or distribute in this commonwealth any feeding stuff which contains a smaller per cent of crude protein or crude fat, or a larger per cent of crude fibre than is certified in the tag or label of such feeding stuff to be contained therein, or who shall fail properly to state the specific name of every ingredient used in its manufacture, or who shall sell or offer, expose or keep for sale or distribute in this commonwealth any feeding stuff or cattle feed or brand thereof which has been mixed or adulterated with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a violation of this act and upon conviction any such manufacturer, importer or other person shall be fined not more than one hundred dollars for the first violation, and not less than one hundred dollars for each subsequent violation.

Rules and Regulations.

SECTION 13. It shall be the duty of the director of the Massachusetts agricultural experiment station to see that the provisions of this act are complied with, and he may prescribe and enforce such rules and regulations relative to the sale of commercial feeding stuff or cattle feed as he deems necessary to carry into effect the full intent and meaning of this act. He may in his discretion prosecute or cause to be prosecuted any person violating any provision of this act, and no complaints shall be made or prosecuted for any such violation except with the authorization and approval of the said director.

Appropriation.

SECTION 14. To defray the cost of collecting samples, making analyses, and of otherwise carrying out the provisions of this act, a sum not exceeding six thousand dollars shall be allowed annually from the treasury of the commonwealth, payable in quarterly payments into the treasury of said station. All moneys

received and disbursed under this act shall be kept in a separate account and shall be audited and reported as are other moneys placed in charge of the trustees of the Massachusetts Agricultural College. In case at any time there should be a surplus, the surplus shall be used in the Massachusetts agricultural experiment station, under the authority of its director, for experiments and research relative to the feeding of farm animals.

Repeal.

SECTION 15. Chapter one hundred and twenty-two of the acts of the year nineteen hundred and three, chapter three hundred and thirty-two of the acts of the year nineteen hundred and four, and all acts and parts of acts inconsistent herewith are hereby repealed.

III. STATUTES RELATING TO RURAL CREDIT, CO-OPERATION AND DRAINAGE.

1. CREDIT UNIONS.[1]

GENERAL ACTS OF 1915, CHAPTER 268.

"Credit Union," Term defined.

SECTION 1. A corporation organized under this act shall include in the corporate name the two words "credit union", to which may be added the word "bank." Other distinguishing words may be used. The words "credit union", whenever hereinafter used, shall apply to a corporation heretofore organized under the provisions of chapter four hundred and nineteen of the acts of the year nineteen hundred and nine, or hereafter organized under the provisions of this act.

Incorporation, etc.

SECTION 2. Seven or more persons, resident in this commonwealth, who have associated themselves by an agreement in writing with the intention of forming a corporation for the purpose of accumulating and investing the savings of its members and making loans to members for provident purposes, may, with the consent of the board of bank incorporation, become a corporation upon complying with all of the provisions of section three of this act. The board of bank incorporation is hereby authorized to grant such consent when it is satisfied that the proposed field of operation is favorable to the success of such corporation, and that the standing of the proposed incorporators is such as to give assurance that its affairs will be administered in accordance with the spirit of this act.

Certain Provisions of Law to apply to Organization.

SECTION 3. Credit unions shall be organized under the provisions, so far as applicable, of sections two to six, inclusive, of chapter three hundred and seventy-four of the acts of the year nineteen hundred and four as amended by section four of chapter two hundred and four of the acts of the year nineteen hundred and six and any other amendments thereof, except that the fee

[1] See also circular on "Credit Unions," published by the Massachusetts State Bank Commissioner.

for filing and recording the articles of organization, including the issuing by the secretary of the commonwealth of the certificate of incorporation, shall be five dollars.

The provisions relating to supervision by the bank commissioner, so far as applicable, of chapter five hundred and ninety of the acts of the year nineteen hundred and eight and any amendments thereof shall apply to credit unions incorporated under this act.

Restrictions.

SECTION 4. No person, partnership or association, and no corporation, except such as have heretofore been incorporated under the provisions of chapter four hundred and nineteen of the acts of the year nineteen hundred and nine and such as shall hereafter be incorporated under the provisions of this act, shall hereafter transact business under any name or title which contains the two words "credit union." The proceedings authorized and the penalties imposed under the provisions of section seventeen of chapter five hundred and ninety of the acts of the year nineteen hundred and eight and all acts in amendment thereof or in addition thereto, so far as applicable, shall apply in all cases of violation of the provisions of this section.

Deposits and Loans.

SECTION 5. A credit union may receive the savings of its members in payment for shares or on deposit; may lend to its members at reasonable rates, or invest, as hereinafter provided, the funds so accumulated; and may undertake such other activities relating to the purpose of the association, as its by-laws may authorize, any provisions in section one of chapter one hundred and fourteen of the Revised Laws notwithstanding.

By-laws.

SECTION 6. The by-laws shall prescribe the name of the corporation, the purposes for which it is formed, the conditions of residence or occupation which qualify persons for membership, the par value of the shares of capital stock and the maximum number of shares which may be held by any one member, the conditions on which shares may be paid in, transferred and withdrawn, the conditions on which deposits may be received, and withdrawn, the method of receipting for money paid on account of shares or deposited, the number of directors and number of

members of the credit committee, the duties of the several officers, the fines, if any, which shall be charged for failure to meet obligations to the corporation punctually, the date of the annual meeting of members, the manner in which members shall be notified of meetings, the number of members which shall constitute a quorum at meetings, and such other regulations as may seem necessary.

Approval by Bank Commissioner.

SECTION 7. No credit union shall receive deposits or payments on account of shares, or make any loans, until its by-laws have been approved in writing by the bank commissioner, nor shall any amendments to its by-laws become operative until they have so been approved.

Certain Property exempt from Taxation.

SECTION 8. All property of a credit union, except real estate, and all capital stock in a credit union shall be exempt from state and local taxation, except legacy and succession taxes.

Capital to be Unlimited.

SECTION 9. The capital of a credit union shall be unlimited in amount. Shares of capital stock may be subscribed for and paid in such manner as the by-laws shall prescribe, except that the par value of shares shall not exceed ten dollars.

Shares may be issued to Minors, etc.

SECTION 10. Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor, or by his parent or guardian, and in either case payments made on such withdrawals shall be valid and shall release the said corporation from any and all liability to the minor, parent, or guardian. A minor under the age of eighteen years shall not have the right to vote. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed, and the account shall be kept in the name of such holder as trustee for such person. If no other notice of the existence and terms of such trust has been given in writing to the corporation, such shares or deposits may, upon the death of the trustee, be transferred to or withdrawn by the person who was

named by the trustee as the beneficiary or by his legal representatives, and such transfer or withdrawal shall release the corporation from any and all liability to any other claimant upon such stock or deposit.

Investment of Funds.

SECTION 11. The capital, deposits and surplus funds of a credit union shall be invested in loans to members with the approval of the credit committee as provided in section seventeen of this act, and any capital, deposits or surplus funds in excess of the amount for which loans shall be approved by the credit committee may be deposited in savings banks or trust companies incorporated under the laws of this commonwealth, or in national banks located therein, or may be invested in the bonds of any other credit union or any farmland bank incorporated under the laws of this commonwealth, or in any securities which are at the time of their purchase legal investments for savings banks in this commonwealth, or, with the approval of the bank commissioner, may be deposited in other credit unions or may be invested in the shares of other credit unions or of farmland banks or co-operative banks incorporated under the laws of this commonwealth: *provided*, that the total amount invested in the shares of other credit unions, farmland banks or co-operative banks shall not exceed thirty per cent of the capital and surplus, and that not more than twenty per cent shall be invested in the shares of other credit unions, nor more than twenty per cent in farmland bank shares, nor more than twenty per cent in co-operative bank shares.

Fiscal Year.

SECTION 12. The fiscal year of every credit union shall end at the close of business on the last business day of October.

Meetings.

SECTION 13. The annual meeting of the corporation shall be held at such time and place as the by-laws prescribe, but must be held within thirty days after the close of the fiscal year. Special meetings may be called by a majority of the directors or of the supervisory committee, and shall be called by the clerk upon written application of ten or more members entitled to vote. Notice of all meetings of the corporation and of all meetings of the board of directors and of committees shall be given

in the manner prescribed by the by-laws. No member shall be entitled to vote by proxy or to have more than one vote, and, after a credit union has been incorporated one year, no member thereof shall be entitled to vote until he has been a member for more than three months.

Entrance Fee.

The members at each annual meeting shall fix the amount of the entrance fee for the ensuing year, which may be made proportional to the number of shares issued to a member, the maximum amount to be loaned any one member, and, upon recommendation of the board of directors, may declare dividends in accordance with the provisions of section twenty-two of this act.

Acts of Credit Committee Subject to Review.

At any annual or special meeting the members may review the acts of the credit committee or of the board of directors, and may reverse any decision of the credit committee of the board of directors by a three fourths vote of the members present and entitled to vote: *provided*, that such three fourths vote comprises a majority of all of the members of the credit union.

Vacancies.

In the event of the death, resignation, or removal from office of the board of directors or any member thereof, or of the credit committee or of any member thereof, the members of the credit union at a special meeting, called for the purpose, may elect other members to fill the vacancies until the next annual meeting.

Amendment of By-laws.

At any annual or special meeting the members of a credit union may amend the by-laws by a three fourths vote of the members present and entitled to vote; *provided*, that a copy of the proposed amendment or amendments shall have been sent to each member with the notice of the meeting.

Board of Directors, Number, Election, etc.

SECTION 14. The business and affairs of a credit union shall be managed by a board of not less than five directors, a credit committee of not less than three members, and a supervisory committee of three members to be elected at the annual meeting

of the corporation. Unless the number of members of the credit union is less than eleven, no member of said board shall be a member of either of said committees, nor shall one person be a member of more than one committee, and all the members of said board and of said committees, as well as all officers whom they may elect, shall be sworn to the faithful performance of their duties and shall hold their several offices until others are elected and qualified in their stead. A record of every such qualification shall be filed and preserved with the records of the corporation. Members of the supervisory committee shall be elected annually for a term of one year. Directors and members of the credit committee shall be elected for a term of not less than one year nor more than three years, as the by-laws shall provide. If the term is more than one year, they shall be divided into classes, and an equal number, as nearly as may be, elected each year. If a director or a member of any of these committees ceases to be a member of the credit union, his office shall thereupon become vacant.

Election of Officers.

SECTION 15. The directors, at their first meeting after the annual meeting of the corporation, shall elect from their own number a president, a vice president, a clerk and a treasurer, who shall be the executive officers of the corporation, and who shall hold office until their successors shall have been elected and qualified. The offices of clerk and treasurer may be held by the same person.

Directors, Powers, Duties, etc.

The board of directors shall have the general direction of the affairs of the corporation, and shall meet as often as may be necessary. It shall be their special duty to act upon all applications for membership and upon the expulsion of members, to fix the amount of the surety bond required of any officer having custody of funds, to determine the rate of interest on loans and deposits, to fill vacancies in the board of directors until new members shall be elected and qualified, to make recommendations to the members of the credit union relative to the amount of entrance fee to be charged new members, the maximum amount to be loaned any one member, the advisability of declaring a dividend and the amount to be declared, the need of amendments to the by-laws, and any other matters upon which, in their opinion, the members should act at any annual or special

meeting. When authorized so to do by the members at any annual meeting or at a special meeting called for the purpose, the board of directors, with the approval of the bank commissioner, may borrow money for the purpose of re-loaning to members.

Supervisory Committee; Powers, Duties, etc.

SECTION 16. The supervisory committee shall inspect from time to time the securities, cash and accounts of the corporation and shall keep fully informed of the financial condition of the corporation and shall supervise the acts of its board of directors, credit committee and officers. At any time the supervisory committee, by a unanimous vote, may suspend any officer of the corporation, or any member or members of the credit committee or of the board of directors, and, by a majority vote, may call a meeting of the shareholders to consider any violation of this act or of the by-laws, or any practice of the corporation which, in the opinion of the committee, is unsafe or unauthorized. Within seven days after the suspension of any officer, or any member or members of the credit committee or of the board of directors, the supervisory committee shall cause notice to be given of a special meeting of the members of the credit union to take such action relative to such suspension as may seem necessary. The supervisory committee may make temporary appointments to fill vacancies caused by the absence, illness or suspension of any officer, director, or member of any committee, and shall fill any vacancies in its own number until new members shall have been duly elected and qualified. The board of directors and the supervisory committee, acting jointly, shall make appointments to fill vacancies in the credit committee until new members of the committee shall be duly elected and qualified.

Credit Committee to approve Loans.

SECTION 17. The credit committee shall hold meetings, of which due notice shall be given to its members, for the purpose of considering applications for loans, and no loan shall be made unless all members of the committee who are present when the application is considered, and at least two thirds of all the members of the committee, approve the loan and are satisfied that it promises to benefit the borrower. All applications for loans shall be made in writing and shall state the purpose for which the loan is desired and the security offered.

Purposes of Loans, etc.

SECTION 18. Loans upon the security of first mortgages upon farm lands shall in no case exceed in amount fifty per cent of the value of the property pledged as security, and shall be for the following purposes only: (*a*) the clearing, draining or otherwise reclaiming and permanently improving agricultural lands; (*b*) the providing of facilities for irrigation; (*c*) the planting and early care of orchards; (*d*) the erection of silos, cold storage plants, greenhouses and permanent farm buildings; (*e*) the purchase of farms and farm lands for personal occupation and management; (*f*) the discharge of existing farm mortgages; and, (*g*) subject to the approval of the bank commissioner, such other improvements of a permanent nature as, in the opinion of the directors, tend to develop agricultural resources. The mortgage deeds securing such loans shall contain a provision for immediate foreclosure if the money lent is applied in whole or in part to purposes not hereby authorized, or if, in the opinion of the directors, it is being spent unwisely or wastefully.

Sale of Farmland Bonds.

A credit union may, with the approval of the bank commissioner, by vote of its board of directors, issue, sell and trade in its own collateral trust bonds, which shall be known and described as farmland bonds and shall be secured as hereinafter provided by the deposit of first mortgage notes on farm lands and the mortgages securing the same. In case of failure of a credit union to pay the interest upon its bonds or the principal when due, the bonds shall be an underlying lien on all its assets and the bank commissioner shall forthwith take possession of the assets and wind up the affairs of the corporation. Loans on the security of first mortgages on farm lands shall be made, and bonds of credit unions secured thereby shall be issued, in accordance with the provisions of chapter two hundred and thirty-one of the General Acts of the current year relating to farmland mortgages and farmland bonds, and any acts in amendment thereof or in addition thereto, so far as applicable.

Certain Officers not to receive Compensation.

SECTION 19. No member of the board of directors or of either the credit or supervisory committee shall receive any compensation for his services as a member of the said board or of such

committee, nor shall any member of the credit or supervisory committee, directly or indirectly, borrow from the corporation or become surety for any loan or advance made by it.

Certain Restrictions upon Directors.

No member of the board of directors shall, directly or indirectly, borrow from the corporation or become surety for any loan or advance made by it, unless such loan or advance shall have been approved at a meeting of the members of the credit union by a majority vote of those present, and the notice of such meeting shall have stated that the question of loans to directors would be considered at such meeting.

Compensation of Certain Officers.

The officers elected by the board of directors may receive such compensation as the board shall authorize.

Guaranty Fund.

SECTION 20. Before the payment of an annual dividend in any year, there shall be set apart as a guaranty fund twenty per cent of the net income which has accumulated during the fiscal year, except as hereinafter provided. Said fund and the investments thereof shall belong to the corporation and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty fund. Upon recommendation of the board of directors, the members at any annual meeting may increase, and, whenever said fund equals or exceeds the amount of capital stock actually paid in, may decrease, the proportion of profits which is required by this section to be set apart as a guaranty fund: *provided*, that, if the corporation holds stock in other credit unions or in farmland banks, the percentage of profits to be set apart as a guaranty fund shall not be decreased until the amount of the fund equals or exceeds the amount of capital stock of the corporation actually paid in and in addition thereto the amount actually paid for the shares of stock in such credit unions and farmland banks.

Supervisory Committee to make Report.

SECTION 21. Immediately before a meeting of the directors called to consider the recommendation of a dividend, the supervisory committee shall make a thorough audit of the receipts,

disbursements, income, assets and liabilities of the corporation for the fiscal year, and shall make a full report thereon to the directors. Said report shall be read at the annual meeting and shall be filed and preserved with the records of the corporation.

Dividends, Source.

SECTION 22. At the annual meeting, a dividend may be declared from income which has been actually collected during the fiscal year next preceding and which remains after the deduction of all expenses, losses, interest on deposits, and the amount required to be set apart as a guaranty fund, or such dividend may be declared in whole or in part from undivided earnings of preceding years not to exceed twenty per cent thereof in any one year, provided such earnings are a part of the surplus of the corporation in excesss of all requirements of the guaranty fund.

How paid.

Such dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly paid shares for which he has subscribed.

Report to Bank Commissioner.

SECTION 23. Within twenty days after the last business day of October in each year, every credit union shall make to the bank commissioner a report in such form as he may prescribe, signed by the president, treasurer and a majority of the supervisory committee, who shall certify and make oath that the report is correct according to their best knowledge and belief. Any credit union which neglects to make the said report within the time herein prescribed shall forfeit to the commonwealth five dollars for each day during which such neglect continues.

Expulsion of Members.

SECTION 24. The board of directors may expel from a credit union any member who has not carried out his engagements with the credit union, or who has been convicted of a criminal offence, or who neglects or refuses to comply with the provisions

of this act or of the by-laws, or whose private life is a source of scandal, or who habitually neglects to pay his debts, or who shall become insolvent or bankrupt, or who shall have deceived the corporation or any committee thereof with regard to the use of borrowed money; but no member shall so be expelled until he has been informed in writing of the charges against him, and an opportunity has been given to him, after reasonable notice, to be heard thereon.

Disposition of Funds upon Withdrawal.

The amounts paid in on shares or deposited by members who have withdrawn or have been expelled shall be paid to them, in the order of withdrawal or expulsion, but only as funds therefor become available and after deducting any amounts due by such members to the credit union. Such expulsion shall not operate to relieve a member from any remaining liability to the credit union.

Dissolution of Corporation.

SECTION 25. At any meeting specially called for the purpose the members, upon recommendation of not less than two thirds of the board of directors, may dissolve the corporation by vote of two thirds of the members of the credit union entitled to vote. A committee of three shall thereupon be elected to liquidate the assets of the corporation under the direction of the bank commissioner, and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportional part of the assets in liquidation after all deposits and debts have been paid.

Repeals.

SECTION 26. Chapter four hundred and nineteen of the acts of the year nineteen hundred and nine and chapter four hundred and thirty seven of the acts of the year nineteen hundred and fourteen are hereby repealed. All credit unions incorporated prior to the passage of this act shall be hereafter subject to the provisions of this act, but the provisions of this act shall not affect any rights acquired under any contract made by such credit unions prior to the passage of this act. The provisions of this act shall not be rendered inoperative or be limited or otherwise affected by any acts or parts of acts inconsistent therewith.

2. FARMLAND BANKS.

GENERAL ACTS OF 1915, CHAPTER 231.

General Provisions.

SECTION 1. In this act the words "farmland bank" shall mean a corporation formed in accordance with the provisions of this act for the purpose of promoting rural mortgage credit in the commonwealth; the word "bank", unless otherwise designated, shall mean a farmland bank; the words "land reserve fund" shall mean the capital stock of a farmland bank; the words "land reserve certificate" shall mean a certificate of shares of stock in a farmland bank; the word "mortgage" shall mean a mortgage upon farm land of which a farmland bank is the mortgagee; the word "bond" shall mean a bond issued by a farmland bank and secured by mortgages upon farm lands; the word "farm" shall mean any tract of land of not less than two acres, cultivated or managed wholly or principally for the purpose of obtaining a revenue from the sale of farm, dairy, or poultry products; the words "farm land" shall mean any land, improved or unimproved, having a present or potential value for agricultural purposes and comprising the whole or a part of a farm in this commonwealth; the word "board" shall mean the board of bank incorporation authorized by section four of chapter two hundred and four of the acts of the year nineteen hundred and six; and the word "commissioner" shall mean the bank commissioner of the commonwealth.

This act may be cited as The Farmland Bank Law.

Incorporation.

SECTION 2. Ten or more persons resident in this commonwealth, who have associated themselves by an agreement in writing with the intention of forming a farmland bank for the purpose of promoting rural mortgage credit, may, with the consent of the board of bank incorporation, become a corporation upon complying with all of the provisions of this act. The board is hereby authorized to grant such consent when it is satisfied that the proposed field of operation is favorable to the success of a farmland bank, and that the standing of the proposed incorporators is such as to give assurance that its affairs will be administered in accordance with the spirit of this act. The words "Farmland Bank" shall be a part of the corporate name of

every corporation organized under the provisions of this act, and the word "Farmland" shall not be used in the corporate name of any other corporation doing business in this commonwealth.

Powers.

SECTION 3. Every corporation which is subject to the provisions of this act shall have the following powers and privileges and shall be subject to the following liabilities and restrictions: —

First. — To adopt and use a corporate seal.

Second. — To have perpetual succession in its corporate name unless dissolved according to the provisions of this act.

Third. — To make contracts, incur liabilities and borrow money as hereinafter provided.

Fourth. — To sue and be sued in its corporate name, and to prosecute or defend to final judgment, execution or decree in any court of law or equity.

Fifth. — To elect not less than six nor more than fifteen directors, a treasurer, clerk, and auditing committee, and, by its board of directors, to elect a president, vice president, committee on loans, and other officers and agents, and to fix the compensation of all directors, officers and committees and to define their duties.

Sixth. — To make by-laws, not inconsistent with the laws of this commonwealth, for regulating its government and for the administration of its affairs as herein provided.

Seventh. — To make loans upon farm lands anywhere within the commonwealth: *provided,*

(*a*) That such loans shall be made for a term not longer than thirty-five years, and shall be secured by a first mortgage on farm lands.

(*b*) That no loan shall exceed fifty per cent of the value of the mortgaged property, the value to be determined by an appraisal by the committee on loans as hereinafter provided.

(*c*) That every mortgage for a period longer than five years shall contain a mandatory provision for the amortization of the loan at maturity, or reduction of the same by annual, semi-annual, or quarterly payments on account of principal.

(*d*) That every loan, for a period longer than five years, or any unpaid balance thereof, may be paid off in whole or in part by the borrower, in accordance with rules to be prescribed by the said bank and approved by the commissioner, at any interest period after such loan has continued for five years.

(*e*) That the total amount loaned to any one individual or corporation shall never at any time exceed ten per cent of the total amount of the then paid-in land reserve fund and surplus.

(*f*) That no loan shall be made by any bank upon the security of its own land reserve certificates, or the certificates of any other farmland bank.

Eighth. — To issue, sell and trade in its own collateral trust bonds, which shall be known and described as farmland bonds and shall be secured, as hereinafter provided, by the deposit of first mortgage notes on farm lands and the mortgages securing the same.

Organization.

SECTION 4. Farmland banks shall be organized under the provisions, so far as applicable, of sections two to six, inclusive, of chapter three hundred and seventy-four of the acts of the year nineteen hundred and four, as amended by section four of chapter two hundred and four of the acts of the year nineteen hundred and six, and any other amendments thereof, except that the fee for filing and recording the articles of organization, including the issuing by the secretary of the commonwealth of the certificate of incorporation, shall be five dollars.

The provisions relating to supervision by the bank commissioner, so far as applicable, of chapter five hundred and ninety of the acts of the year nineteen hundred and eight and any amendments thereof, shall apply to banks incorporated under this act.

By-laws.

SECTION 5. The by-laws may prescribe, subject to the provisions of this act, the name of the corporation, the purposes for which it is formed, the location of the principal office, the time and place of holding and the manner of conducting its meetings, the number of shareholders and directors necessary to constitute a quorum, the powers and duties of its directors and officers, the expediency of providing for an executive committee and the number of members thereof and the duties which may be delegated to it, the amount of the treasurer's bond and the expediency of requiring bonds of other officers or directors of the bank, and the amount of such bonds, the conditions under which a new certificate of stock may be issued in place of a certificate which is alleged to have been lost or destroyed, the requisite notice and

advertisement when bonds are called before maturity, the method in general of transacting its business, and the manner by which the by-laws may be altered, amended or repealed.

Fiscal Year.

SECTION 6. The fiscal year of every farmland bank shall end at the close of business on the last business day of October.

Directors, Officers and Committees.

SECTION 7. The business of every bank subject to this act shall be managed and conducted by a board of not less than six nor more than fifteen directors, a president, a vice president, a clerk, a treasurer, a committee on loans of five members, an auditing committee of three members, and such other officers, committees and agents as the by-laws may authorize. The clerk, treasurer, board of directors, and auditing committee shall be elected annually by ballot by the shareholders. The president, vice president, and committee on loans shall be elected annually by ballot by the board of directors. The president and vice president shall be chosen from the board of directors. Two thirds of the members of the board of directors shall be shareholders, and the remainder shall be borrowers from the bank who are not shareholders, if there is a sufficient number of such borrowers. All officers and the members of the auditing committee shall be shareholders. All officers and directors of the corporation shall be residents of the commonwealth and shall be elected for a term of one year and until their successors are duly elected and qualified. The manner of choosing or of appointing all other officers, committees, and agents, and of filling all vacancies shall be prescribed by the by-laws, and, in default of such by-law, vacancies may be filled by the board of directors, except vacancies in the auditing committee.

Powers and Duties of Directors and Officers.

SECTION 8. The board of directors shall exercise all the powers of the corporation, except as is otherwise provided by law or by the by-laws of the corporation. A bank may, in its by-laws, provide for an executive committee to be elected by and from its board of directors. To such committee may be delegated the management of the current and ordinary business of the bank, and such other duties as the by-laws may prescribe. The duties

of the officers shall be defined in the by-laws. Officers of the bank shall be sworn to the faithful discharge of their duties. The treasurer shall be required, and any other officer entrusted with the property of the bank may be required, to give a bond in such sum and with such sureties as the by-laws may prescribe. The clerk shall record all votes of the corporation in a book to be kept for that purpose.

Committee on Loans.

SECTION 9. The committee on loans shall approve in writing an application for a loan before the same shall be granted. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired. No loan shall be made, except as is hereinafter provided, unless the committee on loans is satisfied that it tends to benefit the borrower and to develop agricultural resources, nor unless it has received the approval in writing of a majority of the members of the committee, who shall certify after an examination that in their best judgment the loan to be made does not exceed fifty per cent of the value of the property. An applicant for a loan which has been refused by the committee on loans may appeal to the board of directors, who are hereby given authority to approve and authorize loans on appeal from the committee.

Auditing Committee.

SECTION 10. The auditing committee shall inspect the securities, cash and accounts of the bank, and shall employ accountants, authorized by law to examine savings banks, to audit the books, records and accounts, and may do so without previous notice to the directors or officers and with such frequency and at such times as they deem necessary or expedient. At the annual meeting of the shareholders the committee shall submit its report, including the results of audits made during the year, and such recommendations as it may desire to make. At any time it may, by a majority vote, call a meeting of the shareholders to consider any violation of this act or of the by-laws, or any matter relating to the affairs of the bank which, in the opinion of said committee, requires action on the part of the shareholders. The committee, unless otherwise provided in the by-laws, shall prescribe the method of keeping the mortgage register, of holding and preserving the mortgages and other securities, of crediting

payments on mortgages, of cancelling mortgages, and of releasing the liens of mortgages. The committee shall also ascertain that all mortgages, deeds, assignments and other evidences of title to real estate have been duly recorded according to law, and, in the event of failure on the part of the proper officers to record any such instrument, the auditing committee shall certify such fact upon the records of the bank, and such officers shall be liable in damages to the bank for any loss sustained by reason of the failure to record such instrument. The auditing committee shall fill vacancies in its own membership until the next annual meeting of the shareholders.

Meetings.

SECTION 11. The annual meeting of the corporation shall be held at such time and place as the by-laws shall prescribe, but it must be held within thirty days after the close of the fiscal year. Special meetings of the shareholders may be called by the president, or by a majority of the directors or of the auditing committee, and shall be called by the clerk upon written application of three or more shareholders who hold at least one tenth part in interest of the capital stock, stating the time, place and purpose of the meeting. Meetings of the board of directors shall be held at least quarterly. Notice of all meetings of the shareholders and of the board of directors and of committees shall be given in the manner prescribed in the by-laws, but at least seven days' notice shall be given of all meetings of the shareholders, which notice shall state the purposes for which the meeting is called. Meetings of the shareholders may be held without notice if all the shareholders waive notice in writing and such waiver is filed with the records of the meeting. Meetings of the board of directors may be held without notice if all members thereof waive notice in writing and such waiver is filed with the records of the meeting. Meetings of committees may be held without notice if all members thereof waive notice in writing. All meetings of the shareholders and of the board of directors shall be held within the commonwealth. If, by reason of the death or absence of the officers of a corporation or other cause, there is no person duly authorized to call or preside at a legal meeting, or if the clerk or other officer refuses or neglects to call it, a justice of the peace may, upon written application of three or more of the shareholders, issue a warrant to any one of them, directing him to call a meeting by giving such notice as is required by law, and may,

by the same warrant, direct him to preside at the meeting until a clerk is duly chosen and qualified, if no officer of the corporation is present who is legally authorized to preside.

Quorum and Proxies.

SECTION 12. Unless the by-laws otherwise provide, a majority in interest of all shares issued and outstanding shall constitute a quorum at a meeting of the corporation, and a majority of the members shall constitute a quorum at a meeting of the board of directors or of any committee. No corporation shall, directly or indirectly, vote upon any share of its own stock. Shareholders shall have one vote for each share of stock owned by them. Executors, administrators, guardians, trustees or persons in any other representative or fiduciary capacity may vote as shareholders upon shares held in such capacity. Shares owned by any corporation may be voted by any duly authorized officer or agent thereof. Shareholders may vote either in person or by proxy. No proxy which is dated more than six months prior to the meeting named therein shall be valid, and no proxy shall be valid after the final adjournment of the meeting for which it was issued.

Land Reserve Fund.

SECTION 13. The capital stock of a farmland bank shall not be less than fifty thousand dollars nor more than five hundred thousand dollars and shall be held by the bank as a separate fund, to be known as the Land Reserve Fund.

The par value of shares in the Land Reserve Fund shall be five dollars or any multiple thereof not exceeding one hundred dollars.

No person shall directly or indirectly hold or own more than ten per cent of the shares in a farmland bank exclusive of any shares which he may hold as collateral security.

Any bank, at a meeting duly called for the purpose, by vote of the majority of its shares outstanding, may amend its articles of incorporation to authorize an increase or a reduction in the amount of its capital stock, and in the case of an increase may determine the terms and the manner of the disposition of such additional stock, but in no event shall the capital stock be increased to an amount exceeding five hundred thousand dollars, nor reduced to an amount less than fifty thousand dollars. If an increase in the total amount of the capital stock shall have been authorized by vote of the shareholders in accordance with the

provisions hereof, the articles of amendment shall also set forth the total amount of capital stock previously authorized and a statement that the increased amount of capital stock has all been paid in in cash, and the bank commissioner shall in no case approve a certificate showing an increase of capital stock until he is satisfied that such payment in full has been made to the bank. If a reduction of the capital stock shall have been authorized by the shareholders in accordance with the provisions hereof, the articles of amendment shall also set forth the total amount of capital stock previously authorized, the amount of the reduction and the manner in which it shall be effected, and a copy of the vote authorizing the reduction. No reduction of capital stock shall be lawful which renders the bank bankrupt or insolvent, but the capital stock may be reduced, if the assets of the bank are not reduced thereby, by the surrender by every shareholder of his shares and the issue to him in lieu thereof of a proportional decreased number of shares and such reduction shall not create any liability of the shareholders of such bank in case of the subsequent bankruptcy of such bank.

Who may be Shareholders.

SECTION 14. Any person, firm, association, society, or organization, and any co-operative bank, credit union, trust company, or other corporation may purchase and hold shares in any farmland bank, subject to the provisions of any laws expressly prohibiting or restricting investment therein by any such corporation, association, society or organization.

Land Reserve Certificates.

SECTION 15. Every shareholder shall be entitled to a land reserve certificate in a form approved by the commissioner, which shall be signed by the president and by the treasurer of the corporation, shall be sealed with its seal, and shall certify that the holder is the owner of the number of shares represented by the certificate. Land reserve certificates may be transferred upon the books of the corporation in accordance with the laws relating to the transfer of stock in general business corporations. The directors of a farmland bank may, unless otherwise provided by the by-laws, determine the conditions upon which a new certificate may be issued in place of any certificate which is alleged to have been lost or destroyed.

Bonds.

SECTION 16. Farmland bonds in a form approved by the commissioner may be issued by a bank by vote of its board of directors whenever the bank holds as mortgagee farm land mortgages of a term longer than five years in amount sufficient to secure such issue. Each issue of bonds shall constitute a separate series and shall be so designated, the first series being designated as "Series One of Farmland Bonds of the Farmland Bank," and subsequent series accordingly. No series shall be issued for less than an aggregate sum of ten thousand dollars nor for more than ninety-five per cent of the amount of the mortgages against which it is issued. Bonds may be issued in denominations of fifty dollars or any multiple thereof, but no bond shall be for a larger amount than one thousand dollars. Bonds may bear such rate of interest as may be determined by the directors, but not exceeding five per cent per annum. They shall be payable on a date specified and shall be subject to call by the bank at two per cent above par with accrued interest at any interest period after the date of issue, or after a date specified in the bond, after such notice and advertisement as may be provided in the by-laws, or, if no provision is made in the by-laws, as shall be approved by the commissioner. Mortgages pledged as collateral security for bonds of any series shall be kept at all times in the possession and under the control of the bank, or, upon direction of the commissioner, shall be deposited with a trustee who shall be appointed by the bank with the approval of the commissioner, and shall hold the mortgage notes and mortgages for the bond holders. As the amortization payments are received and credited upon the mortgage notes so deposited as security, the bonds issued by the bank and secured thereby shall be called and paid, or purchased in the open market and retired, to the extent of the payments received, and credited upon the mortgage notes held as security therefor, under rules and regulations adopted by the bank with the approval of the commissioner, or the payments so received may be deposited by the bank, or, if a trustee has been appointed, shall be paid over to the trustee, to be deposited at interest as an amortization fund to meet the payment of the notes at maturity. Only mortgages for a period longer than five years shall be pledged as collateral for farmland bonds. Bonds issued by any bank in accordance with the provisions of this act shall be a legal investment (1) for any savings bank or trust company to an amount not exceeding one fifth of

the deposits of such savings bank or trust company; (2) for trust funds and estates and for funds and estates under the jurisdiction of or administered by any of the courts of the commonwealth; (3) for insurance companies as defined and prescribed by section thirty-seven of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven, and any amendment thereof; (4) for surplus funds of co-operative banks in addition to the investments authorized by section eleven of chapter one hundred and fourteen of the Revised Laws; (5) for the sinking funds of the commonwealth or of any county or city or town thereof.

Investments.

SECTION 17. The land reserve fund, and the surplus fund to the amount of one fourth of the land reserve fund, shall be invested only in (1) first mortgages upon farm lands, which shall have the approval of the committee on loans or the board of directors as herein provided; (2) bonds and notes which are at the time of their purchase legal investments for savings banks in this commonwealth; (3) investments, other than real estate and mortgages upon real estate, which shall be approved by the commissioner: *provided*, that the surplus fund, when other funds of the bank are not sufficient, may be expended in meeting the accruing obligations and necessary current expenses of conducting the business of the bank. Any uninvested portion of the land reserve fund or the surplus fund may be deposited, pending investment, in any national bank or trust company in the commonwealth.

Holdings of Real Estate.

SECTION 18. A farmland bank may purchase and hold real estate only as provided in this section:

First. — It may own the building in which its offices are located, and may lease such portion of the building as may not be required for the business of the bank: *provided*, that no part of the land reserve fund or the surplus fund required by the provisions of this act shall be invested in the purchase of such building.

Second. — It may hold real estate acquired by the foreclosure of mortgages owned by it, or by purchase at sales made under the provisions of such mortgages, or upon judgments for debts due to it, or in settlements effected to secure such debts, but all such real estate shall be sold by the bank within five years after

the title thereof is vested in it, unless the commissioner upon petition of the committee on loans of such bank for cause shall grant additional time for the sale of such real estate.

Loans.

SECTION 19. Loans shall be made only upon security of first mortgages upon farm lands. The rate of interest upon loans shall in no event be more than six per cent, but an additional charge to the borrower may be made, to be applied to the cost of administering the affairs of the bank, which charge in no case shall exceed one per cent of the amount unpaid on the loan and shall be paid in annual, semi-annual, or quarterly payments at the same time that the interest is paid. The rate of interest upon loans for a period longer than five years shall not exceed the rate of interest upon the bonds secured thereby by more than one per cent annually upon the amount unpaid on the loan.

Upon loans for a period longer than five years amortization payments shall be made in such amounts as shall be stated in the mortgage note and mortgage, which amounts shall be sufficient to pay the principal in full at maturity and shall be payable in equal annual, semi-annual, or quarterly payments at the same time that the interest is paid. A borrower may pay the amount of his mortgage loan or any part thereof on any interest day by surrendering at par and accrued interest bonds of the series for which his mortgage is pledged as security.

Fines may be imposed upon borrowers for failure to pay interest or amortization payments promptly, but such fines shall not exceed one half of one per cent per month upon the unpaid part of the loan for the time that the default continues. In no event shall fines for more than six months upon any one default be collected.

Dividends and Surplus.

SECTION 20. The directors may from time to time declare dividends to be paid out of the profits of the bank, but no dividend shall be declared unless the combined amount of the land reserve and surplus funds is equal to five per cent of the par value of the bonds outstanding at the time the dividend is declared. No dividend shall be declared exceeding six per cent per annum upon the par value of the land reserve certificates outstanding, except as is hereinafter provided. Net earnings in excess of the dividend declared shall annually be carried to

surplus until the surplus fund shall equal twenty-five per cent of the land reserve fund. Dividends shall be cumulative only after the surplus fund shall have been established and maintained equal to twenty-five per cent of the land reserve fund. Any profit not required to maintain the land reserve and surplus funds, and to pay cumulative dividends not exceeding six per cent per annum, may be carried in amount not exceeding fifty per cent to surplus until the surplus fund shall equal the land reserve fund, and any amount not carried to surplus shall be annually divided in equal shares of which one half shall be placed to the credit of the borrowers in amounts in proportion to their loans unpaid at the time of such distribution, and the remaining half shall be paid as an extra dividend upon the outstanding land reserve certificates.

Exemption from Taxation.

SECTION 21. All property of a bank incorporated under the provisions of this act, except real estate, and all land reserve certificates and farmland bonds issued by the bank, shall be exempt from state and local taxation, except legacy and succession taxes.

Articles of Amendment.

SECTION 22. No amendment for alteration of the agreement of association or articles of organization shall take effect until said articles of amendment, signed and sworn to by the president, treasurer and a majority of the directors, shall have been approved by the commissioner and filed in the office of the secretary of the commonwealth. The fee for filing and recording such articles of amendment shall be five dollars.

Dissolution.

SECTION 23. A farmland bank may be dissolved by vote of its shareholders, representing two thirds in amount of the shares issued and outstanding, at any meeting called for the purpose after due notice to all shareholders in accordance with the provisions of the by-laws. The bank shall be dissolved in accordance with rules and regulations prescribed by the bank commissioner. In case of dissolution, after all obligations of the bank have been paid, or due provision made for their payment at maturity, the remaining assets of the bank available for distribution shall be distributed between the borrowers and

shareholders in the manner hereinbefore provided for the distribution of surplus earnings of the corporation between the borrowers and shareholders. In the event that the original borrower has sold the mortgaged premises and the purchaser has assumed and agreed to pay the mortgage, the purchaser, by assuming the mortgage, shall succeed to all rights of the borrower and shall be entitled to receive any share of the borrower in any distribution of surplus, and in any distribution of assets of the corporation in dissolution.

3. CO-OPERATIVE ASSOCIATIONS.

ACTS OF 1913, CHAPTER 447.

Co-operative Associations.

SECTION 1. Seven or more persons, residents of the commonwealth, may associate themselves as a corporation, association, society, company or exchange, for the purpose of conducting within the commonwealth any agricultural, dairy or mercantile business on the co-operative plan. The word "co-operative" shall form a part of the name of the corporation, and, for the purposes of this act, the words "association", "company", "exchange", "society", and "union", shall have the same signification and shall import a corporation.

Incorporation.

SECTION 2. The corporation shall be formed in the manner prescribed in, and be subject to, the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, and all acts in amendment thereof and in addition thereto, so far as they are not inconsistent with the provisions of this act.

Capital Stock.

SECTION 3 (*as superseded by 1915, 118, § 1*). The capital stock of such a co-operative corporation shall not be less than one hundred dollars, nor more than one hundred thousand dollars. No stockholder shall own shares of a greater par value than one tenth of the total par value of the capital stock, nor shall any member be entitled to more than one vote on any subject arising in the management of the corporation.

Investment of Reserve Fund.

SECTION 4. At any regular meeting, or at any duly called special meeting, at which a majority of all its stockholders shall be present, a corporation organized under this act may authorize the investment of its reserve fund or any part thereof, first, in the building in which it is doing business, or, second, in a first mortgage of real estate owned and occupied as a dwelling by any of its stockholders.

Apportionment of Earnings.

SECTION 5. The directors of every such corporation shall apportion the earnings of the corporation in the following manner:

1. They shall set aside annually not less than ten per cent of the net profits of the corporation for a reserve fund until there is accumulated in said reserve fund an amount not less than thirty per cent of the paid-up capital stock.

2. They shall declare and pay dividends on the paid-up capital stock not exceeding five per cent per annum.

Distribution of Earnings.

SECTION 6 (*as amended by 1915, 118, § 3*). 1. From the balance of the net earnings of the corporation the directors may appropriate a sum not exceeding five per cent of the annual net earnings to be used in teaching co-operation.

2. The directors shall distribute the remainder of such earnings or any part thereof by a uniform dividend upon the amount of purchases or sales of shareholders, through the corporation, and, if the directors so vote, upon the amount of wages which have been earned and paid to employees except that in the case of a purchaser who is not a shareholder, but who desires to become a shareholder, a dividend of one half the uniform dividend may be declared upon such non-shareholder's purchases or sales and credited to him on account of the purchase of stock for which he may subscribe. In productive corporations, including creameries, canneries, storages, factories and the like, dividends shall be calculated on raw material delivered to the corporation instead of on goods purchased. If the corporation be both a purchasing and a selling or a productive concern, the dividends may be on both raw material and on goods purchased. The profits or net earnings of such corporation shall be distributed to those entitled thereto at such times as the by-laws prescribe, which shall be as often as once in twelve months.

Certificate of Organization to be approved and filed.

SECTION 7. Any co-operative association now organized by law in this commonwealth for any of the purposes mentioned in this act, and qualified so to do, may by a majority vote of the stockholders at a meeting called for the purpose vote to accept the provisions of this act, and shall thereupon present to the commissioner of corporations a certificate, signed and sworn to by its secretary, setting forth a copy of said vote, the date of the meeting at which the vote was passed, and such further evidence as the commissioner may require of its legal existence and of its intention to accept the provisions of this act. The commissioner shall examine the certificate and evidence of organization, and, if it appears that the provisions of law have been complied with, shall so certify, and shall approve the certificate by his endorsement thereon, and thereupon such corporation shall have the powers and privileges and be subject to the duties and liabilities of corporations formed under this act. Upon the payment of a fee of one dollar said certificate shall be filed in the office of the secretary of the commonwealth, who shall cause it and the endorsement thereon to be recorded.

Taking Effect.

SECTION 8. This act shall take effect upon its passage.

Use of the Word "Co-operative" restricted.

SECTION 9 (*added by G. A., 1915, 118, § 2*). No person, partnership, association or corporation, organized or doing business for profit, except corporations formed under the provisions of this act, or co-operative banks organized under chapter one hundred and fourteen of the Revised Laws, shall hereafter transact business under any name or title, which contains the word "co-operative". The provisions of section seventeen of chapter five hundred and ninety of the acts of the year nineteen hundred and eight shall apply to violations of this section, and as prescribed therein, proceedings shall be brought against any person, partnership, association or corporation which violates the provisions of this section. Any person, partnership, association or corporation not organized under the provisions of this act, transacting business under a name or title which contains the word "co-operative", shall alter the said name or title to comply with the provisions of this act within ninety days after its passage.

Fee for Filing.

SECTION 10 (*added by G. A., 1915, 118, § 2*). The fee for filing and recording the articles of organization required by chapter four hundred and forty-seven of the acts of the year nineteen hundred and thirteen, including the issuing by the secretary of the commonwealth of the certificate of incorporation, shall be one twentieth of one per cent of the total amount of the authorized capital stock as fixed by the articles of organization, but not in any case less than five dollars.

4. COUNTY FARM BUREAUS.

ACTS OF 1914, CHAPTER 707.

Corporations organized to promote Agriculture may receive County Aid.

SECTION 1. Any corporation organized under the laws of this commonwealth, not organized for profit and no part of the net income of which shall inure for the benefit of stockholders, having for its corporate purpose the improvement of agriculture and country life, which shall be approved by the Massachusetts Agricultural College and by the county commissioners of the county in which it is located, shall be eligible to receive the county aid herein authorized, but only one such corporation in each county shall be approved for this purpose.

Appointment of Advisers in Agriculture.

SECTION 2. Every corporation approved under the provisions of section one shall appoint and maintain one or more advisers in agriculture and country life, who shall be appointed by the advisory board established by section four hereof, and who shall hold office until their successors are appointed and qualified.

Duties of Advisers.

SECTION 3. It shall be the duty of the said advisers to advise and consult with individuals and organizations in reference to farming methods, to assist in the development and improvement of agriculture and of country life, to give instruction in the formation of co-operative enterprises, to promote better business methods among farmers, to assist in promoting more satisfactory methods of marketing farm products, and to perform

any other work adapted to promote the agricultural or rural development of that country. It shall be the duty of the advisers to keep in touch with, and to bring to their assistance, all agencies in the commonwealth or elsewhere that will enable them to utilize the latest and best knowledge in the furtherance of their work. The duties of the advisers shall be performed under the supervision and direction of said advisory board, and they shall be subject to such rules and regulations as said board may prescribe.

Establishment of Advisory Boards.

SECTION 4. In every county in which a corporation such as that described in section one is organized, there shall be established an advisory board of seven members, consisting of three members to be appointed by the corporation, three by the county commissioners of said county, and one by the six thus chosen. It shall be the duty of the advisory board to superintend and direct the work of the corporation within the county, and it shall have power to appoint, suspend or remove agricultural advisers appointed pursuant to this act.

Finance Boards; Appointment, Duties.

SECTION 5. In every such county there shall also be established a finance board, which shall be composed of two members: — one appointed by the county commissioners of said county and one by the said corporation. It shall be the duty of the finance board to certify from time to time, whenever requested so to do by the corporation, to the county treasurer the sums received in the treasury of the corporation in each year, other than the funds appropriated by the county. It shall also be the duty of the said board to consider and report upon the budget of the corporation as provided in section eight.

Power of Appointment.

SECTION 6. The power of appointment herein vested in the corporation may be exercised by its executive committee; or if no provision is made in its by-laws for an executive committee, then by its board of directors or other board exercising powers corresponding to those of directors.

Amount to be included in Annual Estimate of County Expenses.

SECTION 7. In every such county, the county commissioners shall include in their annual estimate of county expenses, to be raised by the county by tax levy and appropriated by the general court, such sum as they may deem proper to be contributed to said corporation for the purpose of defraying the expenses of maintaining said adviser or advisers, and of the work carried on by the corporation: *provided, however,* that the sum so contributed shall not be less than one thousand dollars, nor more than the amount raised annually by said corporation from all other sources. The sum so contributed shall be paid to the corporation upon the certificate of the finance board showing that an equal amount has been received in the treasury of the corporation from all other sources; and said sum shall be expended in said county by said corporation for the purposes above named.

Estimates of Expenditures.

SECTION 8. Every corporation of the kind described in section one receiving aid under the provisions of this act shall annually, in the month of December, prepare or cause to be prepared a budget containing a detailed estimate of all sums required to be expended by it for its corporate purposes during the ensuing year, which budget shall forthwith be transmitted to the finance board. The finance board shall estimate what sum may be proper for the corporation to expend during said year for its corporate purposes, and shall submit the estimate, on or before the second Wednesday of the following January, to the county commissioners.

Towns may vote to acquire Real Estate, etc.

SECTION 9. Any town may, at a legally called town meeting, vote to acquire by purchase or otherwise real estate for the purpose of carrying on, under the direction of the agricultural advisers of the county, agricultural demonstration work within the town, and may appropriate money for the purposes of acquiring such real estate, or for the support of agricultural demonstration work on land owned by the town, or owned by any resident of the town.

Counties to which this Act shall apply.

SECTION 10. This act shall apply only to the counties of the commonwealth in which a corporation of the class described in

section one and approved by the Massachusetts Agricultural College and by the county commissioners has and maintains a principal place of business: *provided*, that counties which maintain county vocational agricultural schools, shall not maintain county-aided corporations for the purposes designated in this act.

5. DRAINAGE OF LOW LANDS.

REVISED LAWS, CHAPTER 195.

IMPROVEMENT OF MEADOWS AND SWAMPS.

Improvement of Low Land.

SECTION 1. If it is necessary or useful to drain or flow a meadow, swamp, marsh, beach or other low land which is held by several proprietors or to remove obstructions in rivers or streams leading therefrom, such improvements may be made as hereinafter provided.

1702, 11, § 1. R. S. 115, § 1. P. S. 189, § 1.
1795, 62, § 1. G. S. 148, § 1.

See Talbot *v.* Hudson, 16 Gray, 417 (see page 141).
Turner *v.* Nye, 154 Massachusetts, 579 (see page 141).
J. B. Smith *et al. v.* Amory Smith *et al.*, 148 Massachusetts, 1.

Petition.

SECTION 2. Such proprietors, or a majority in interest, either in value or area, may file a petition in the superior court for the county in which the land or any part thereof lies, setting forth the proposed improvements and the reasons therefor. The court shall thereupon cause notice of the petition to be given in such manner as it may order to any proprietors who have not joined in the petition. In the county of Dukes County the probate court shall have concurrent jurisdiction of such petition and parties shall have therein the same rights of appeal and exception as in the superior court.

1702, 11, § 1. R. S. 115, § 2. 1869, 387. P. S. 189, § 2.
1795, 62, § 1. G. S. 148, § 2. 1876, 228.

Day *v.* Hurlburt, 11 Metcalf, 321 (see page 142).
Henry *v.* Thomas, 119 Mass. 583.

Appointment of Commissioners.

SECTION 3. If, upon a hearing, the court finds that the improvements proposed will be for the general advantage of the proprietors, it may appoint three, five or seven commissioners, who shall be sworn to the faithful performance of their duties,

shall view the land, notify parties concerned, hear them as to the best manner of making the improvements and prescribe the measures to be adopted for such purpose.

1702, 11, § 1. R. S. 115, §§ 3, 4. P. S. 189, § 3.
1795, 62, § 1. G. S. 148, § 3.

Duties and Powers of Commissioners.

SECTION 4. The commissioners shall, according to the petition and the order of the court, cause dams or dikes to be erected on the land at such places and in such manner as they shall direct, may order the land to be flowed thereby for such periods of each year as they shall consider most beneficial and may cause ditches to be opened on the land and obstructions in any rivers or streams leading therefrom to be removed. They shall meet from time to time as may be necessary to cause the work to be completed according to their directions.

1795, 62, § 1. R. S. 115, § 5. G. S. 148, § 4. P. S. 189, § 4.

Coomes *v.* Burt, 22 Pickering, 422.

SECTION 5. They may employ suitable persons to erect the dams or dikes or to perform the other work under their direction, for such reasonable wages as they may agree upon, unless the proprietors themselves do the same in such time and manner as the commissioners shall order.

1795, 62, § 1. R. S. 115, § 6. G. S. 148, § 5. P. S. 189, § 5.

Assessment of Expenses.

SECTION 6. They shall apportion and assess the whole charge and expense of the improvements and of executing the commission upon the proprietors of the land, according to the quantity, quality and situation of each person's part thereof and to the benefit that he will derive from the improvements.

1702, 11, § 1. R. S. 115, § 7. P. S. 189, § 6.
1795, 62, § 2. G. S. 148, § 6.

Collection of Assessments.

SECTION 7. They may appoint a collector of the assessments, and shall give him a warrant to collect, pay over and account for the same to such person as they may appoint. The collector shall have the same power and proceed in like manner in collecting the assessments as is provided for the collection of town taxes.

1702, 11, § 1. R. S. 115, § 8. P. S. 189, § 7.
1795, 62, § 2. G. S. 148, § 7.

Upton *v.* Holden, 5 Metcalf, 360.
Wright *v.* Leonard, 4 Gray, 150 (see page 142).

SECTION 8. If the collector neglects, for twenty days after being so required by the commissioners, to account for and pay over the money he has collected, he shall be liable to the commissioners in an action of contract for the whole amount committed to him for collection; and the money so recovered, after deducting the expenses of recovery, shall be applied and accounted for by the commissioners as if it had been collected and paid over by the collector pursuant to his warrant.

1795, 62, § 2. R. S. 115, § 9. G. S. 148, § 8. P. S. 189, § 8.

Compensation.

SECTION 9. The compensation of the commissioners shall be determined by the court, and that of the collector shall be agreed upon between him and the commissioners.

1702, 11, § 2. R. S. 115, § 10. G. S. 148, § 9. 1795, 62, § 3. P. S. 189, § 9.

Commissioners' Return.

SECTION 10. The commissioners shall, as soon as may be after the completion of the business, make a return to the court of their doings under the commission, including an account of all money assessed and collected by their order and of the disbursement thereof.

1795, 62, § 3. R. S. 115, § 11. G. S. 148, § 10. P. S. 189, § 10.

Proprietors on Charles *v.* Proprietors on Neponset, 7 Pickering, 207.

Apportionment between Tenant and Remainderman.

SECTION 11. If the commissioners find that a part of the land is held by a tenant for life or years, they shall apportion and assess the expense upon the tenant and the remainderman or reversioner, unless the parties agree on an apportionment; and every such tenant, remainderman and reversioner shall be considered a proprietor.

1795, 62, § 4. R. S. 115, § 12. G. S. 148, § 11. P. S. 189, § 11.

Land Subject to Mortgage.

SECTION 12. A mortgagor or mortgagee in possession shall be considered a proprietor, and all amounts paid by a mortgagee by order of the commissioners shall be allowed to him under the provisions of section twenty of chapter one hundred and eighty-seven.

1795, 62, § 4. R. S. 115, § 13. G. S. 148, § 12. P. S. 189, § 12.

Commissioners may make or open Dams, etc.

SECTION 13. If the commissioners find it necessary or expedient to reduce or raise the water to obtain a view of the land or for the more convenient or expeditious removal of obstructions, they may open the flood gates of any mill, or make other needful passages through or around the dam thereof, or erect a temporary dam on the land of a person who is not a party to the proceedings, and may maintain such dam or passages for the water as long as may be necessary for such purposes.

1745–46, 16, §§ 1, 4. R. S. 115, § 14. P. S. 189, § 13.
1795, 62, § 5. G. S. 148, § 13.

Damages.

SECTION 14. Damages so caused shall be determined by the commissioners, unless agreed on between them and the parties, and shall be paid by the commissioners out of the money to be assessed and collected by them as before provided.

1745–46, 16, § 2. R. S. 115, § 15. P. S. 189, § 14.
1795, 62, § 5. G. S. 148, § 14.

Notice before erecting or opening Dam, etc.

SECTION 15. The commissioners, before proceeding to open flood gates, or to make other passages for water through or around a dam or to erect a dam on the land of a person who is not a party to the proceedings, shall give him reasonable notice in writing of their intention. If such person appeals from their decision and gives notice in writing of his appeal to the commissioners or to any of them, they shall suspend all proceedings upon his land until the appeal is determined, if it is entered at the return day next after the expiration of seven days from the time of claiming the same.

R. S. 115, § 18. G. S. 148, § 17. P. S. 189, § 15. 1885, 384, § 5.

Appeal.

SECTION 16. If a party to the proceedings or a person otherwise interested therein or affected thereby is aggrieved by any doings of the commissioners, he may enter an appeal in the court in which the petition was filed at the return day next following that at which the return of the commissioners was filed; and the court may affirm, reverse or alter any adjudication or order of the commissioners, and may make any appropriate order. Questions of fact arising upon the appeal shall, upon motion of

either party be tried by a jury in such manner as the court orders.

1702, 11, § 4. 1745–46, 16, § 4. 1795, 62, § 6. R. S. 115, §§ 16, 17. G. S. 148, §§ 15, 16. P. S. 189, §§ 16, 17. 1885, 384, § 5.

Day *v.* Hurlburt, 11 Met. 321 (see page 142).

Construction of Roads to Swamps.

Roads to Swamps.

Section 17. A city, town, person or corporation owning low land, ponds, swamps, quarries, mines or mineral deposits, which, on account of adjacent land belonging to other persons or occupied as a highway, cannot be approached, worked, drained, or used in the ordinary manner without crossing such land or highway, may construct roads, drains, ditches, tunnels and railways thereto as hereinafter provided.

1855, 104, § 1. G. S. 148, § 19. P. S. 189, § 19.

Sherman *v.* Tobey, 3 Allen, 7.

Petition and Bond.

Section 18. The party which desires to make such improvements shall file a petition therefor with the county commissioners for the county in which the land lies, setting forth the names of the persons interested, if known to the petitioner, and also in detail the nature of the proposed improvement and the situation of the adjoining land. Such petition shall be accompanied by a bond satisfactory to said commissioners for the payment of the expenses to be incurred in the prosecution of the petition.

1855, 104, § 2. G. S. 148, § 20. P. S. 189, § 20.

Notice.

Section 19. The commissioners, at their first meeting after the filing of the petition and bond, shall order notice of the time and place of meeting to consider the petition to be published once in each of three successive weeks in a newspaper, if any, published in the county; otherwise, in a newspaper published in an adjacent county. They shall also give notice thereof to the clerk of each city or town in which the land lies.

1855, 104, § 3. G. S. 148, § 21. P. S. 189, § 21.

Powers of Commissioners.

SECTION 20. If, after examination, inspection and a hearing, they find that the improvements prayed for are necessary, they shall so lay out and establish the same as to do as little injury as practicable, assess the damages sustained by the proprietor of the adjacent land and apportion them among all parties to be benefited according to the benefits each will receive. Such award shall be conclusive upon the parties charged with such payment unless an appeal is taken within one year.

1855, 104, § 4. G. S. 148, § 22. P. S. 189, § 22.

Appeal.

SECTION 21. A party who is aggrieved by the award may appeal therefrom, and thereupon like proceedings shall be had as are provided in chapter forty-eight.

1855, 104, § 6. G. S. 148, § 23. P. S. 189, 23.

Repairs of Improvements.

SECTION 22. If it is necessary to repair an improvement so made, a majority of the persons benefited by it may cause such repairs to be made, and may compel contribution on the basis of the award from each person benefited.

1855, 104, § 5. G. S. 148, § 24. P. S. 189, § 24.

Petition to Mayor, etc., or Selectmen.

SECTION 23. If the land mentioned in section seventeen lies entirely in one city or town, the petition may be made to the mayor and aldermen or selectmen thereof, who shall proceed thereon in all respects as above provided for county commissioners, except that they need not give notice to their city or town. Such petition shall be filed in the office of the city or town clerk before proceedings are had thereon; and the petition with the order or award thereon shall be recorded in said office within two months after the order or award has been made.

1857, 292, §§ 1, 3. G. S. 148, §§ 25, 26. P. S. 189, §§ 25, 26.

Fees.

SECTION 24. The mayor and aldermen or selectmen shall each receive two dollars for each day's services upon such petition and the city or town clerk shall receive for recording a petition,

order or award thereon the same fees as are provided for registers of deeds by section twenty-nine of chapter two hundred and four.

1857, 292, §§ 3, 4. G. S. 148, § 27. P. S. 189, § 27.

Complaint to County Commissioners.

SECTION 25. A party aggrieved by such order or award, or by the refusal of the mayor and aldermen or selectmen to make such order or award, may, within one year thereafter, complain to the county commissioners, who shall thereupon proceed in all respects as though the petition had been originally filed with them.

1857, 292, § 2. G. S. 148, § 28. P. S. 189, § 28.

ACTS OF 1913, CHAPTER 759.

RECLAMATION OF WET LAND.

Commonwealth may acquire Land for Purpose of Reclamation.

SECTION 1. The state board of agriculture and the state board of health, acting as a joint board, are hereby authorized with the approval of the governor and council, to purchase or take by right of eminent domain in the name of the commonwealth for the purposes of this act, any tract or tracts of wet land, except salt marshes, together with such dry lands, if any, as may be necessary for access thereto. In carrying out the provisions of this act the said joint board may, in its discretion, determine that any of the powers and duties hereby conferred or imposed shall be exercised and performed by either one of the two boards composing the joint board.

Damages.

SECTION 2. The said joint board shall estimate and determine, as soon as may be, all damages sustained by any person or corporation by the taking of land, or any right therein, under authority of this act, and the same shall be paid from the fund hereinafter provided; but any one aggrieved by such determination may have his damages assessed by a jury of the superior court in the manner provided by law with respect to damages sustained by reason of the laying out of ways. If, upon trial, damages are increased beyond the award of the board, the aggrieved party shall recover costs; otherwise such party shall pay costs; and costs shall be taxed as in civil cases. No suit for such damages shall be brought after the expiration of two years from the date of the recording of the taking, as required by the following section.

Description of Land taken to be recorded.

SECTION 3. Within sixty days after any land, or right therein, is taken under this act, the said joint board shall file and cause to be recorded in the proper registry of deeds a description thereof sufficiently accurate for its identification, with a statement of the purpose for which the same is taken, signed by a majority of the said joint board; and upon such filing title to the land or rights so taken shall vest in the commonwealth.

Labor of Prisoners may be employed.

SECTION 4. The said joint board, acting through such agent or agents as it may appoint, shall drain and reclaim lands acquired under this act, and for this purpose may purchase machinery and other necessary equipment, and may execute such contracts as the governor and council shall approve. So far as is practicable, the labor of prisoners shall be employed in reclaiming the said lands, under such regulations and conditions as may be prescribed by the prison commissioners; and it is hereby made the duty of the prison commissioners to furnish such labor, upon request of the said joint board, whenever it is practicable for them to do so. The cost of transportation of prisoners to and from the place of labor and the cost of providing them with necessary meals while so employed shall be paid from the fund herein provided for.

Cultivation of Reclaimed Land.

SECTION 5 (*as amended by 1914, 596, § 2*). When said lands, or any convenient part thereof, shall have been drained and reclaimed, the said joint board shall cause the same to be cultivated for not less than two successive seasons, in such manner as in the opinion of the board will best demonstrate the value thereof for agricultural uses. The products of cultivation, except hay sold in the bale, shall not be sold in open market, but shall be used for the supply of public institutions, and such institutions shall pay to the joint board such sums for the said products as they would pay if the same were purchased in open market, and the sums so received shall be added to the sum herein provided for.

Wet Lands Reclamation Fund.

SECTION 6. The said joint board shall thereafter, at such time or times as it shall deem expedient, offer such lands for sale, in whole or in part, at a price not less than the cost of the land

plus the cost of reclaiming the same. Any sums received from such sales shall be paid into the treasury of the commonwealth and credited to the ordinary revenue until the total amount expended under the provisions of this act has been refunded, after which the proceeds shall be credited to a fund to be known as the Wet Lands Reclamation Fund and shall be used for the reclamation of other tracts in the manner herein provided.

Expenditures.

SECTION 7. In carrying out the provisions of this act, the said joint board may expend a sum not exceeding fifteen thousand dollars from the treasury of the commonwealth. This sum shall be in addition to any amounts received from the sale of products as aforesaid.

ACTS OF 1914, CHAPTER 596.

Purchase of Wet Lands for Reclamation.

SECTION 1. The joint board established by chapter seven hundred and fifty-nine of the acts of the year nineteen hundred and thirteen may, in its discretion, in order further to carry out the purposes of said chapter, purchase any wet lands at a price not exceeding the assessed valuation thereof, and may accept on behalf of the commonwealth gifts of land to be drained and reclaimed as therein provided. The sellers or donors of such lands may reserve the right to buy back the land at any time within two years upon paying the price originally paid by the commonwealth, together with the amount expended in improvements and maintenance, and interest at the rate of four per cent per annum, but in the absence of a provision to that effect in the deed of purchase or gift the former owner shall not have such right, and the lands so acquired shall be offered for sale, in whole or in part, by the said joint board, at such time or times as it shall deem expedient, at a price not less than the cost of the land plus the cost of reclaiming the same, and interest at the rate of four per cent per annum.

Expenditure authorized.

SECTION 3. In carrying out the provisions of this act, and of said chapter seven hundred and fifty-nine of the acts of the year nineteen hundred and thirteen, the joint board may expend a sum not exceeding ten thousand dollars, from the treasury of

the commonwealth, in addition to the sums authorized by section seven of said chapter.

REVISED LAWS, CHAPTER 196.

CRANBERRY LAND AND ICE PONDS.

Dam to flow Cranberry Land.

SECTION 39. An owner or lessee of land appropriated or which he desires to appropriate to the cultivation and growth of the cranberry may erect and maintain a dam upon and across a stream to flow and irrigate said land, subject to the provisions of this chapter so far as applicable; but he shall not erect and maintain a dam across a navigable stream or across the outlet of a great pond, without a license therefor from the board of harbor and land commissioners.

1866, 206. P. S. 190, § 48. 1892, 55.

Hinckley *v.* Nickerson, 117 Mass. 213 (see page 167).
Blackwell *et al. v.* Phinney *et al.*, 126 Mass. 458.
Howes *v.* Grush, 131 Mass. 207 (see page 165).
Turner *v.* Nye, 154 Mass. 579 (see page 141).

Apportionment of Expense.

SECTION 40. If a dam has been so erected or maintained or if a person has at his own expense made, kept open or repaired any ditches or drains for the improvement or cultivation of such tract of land, any owner or lessee of a like tract, who uses such dam, ditches or drains or who by more remote means receives benefit thereby for the flowing, irrigating or draining of such last-mentioned tract, shall pay to the person who has erected or maintained such dam or incurred such expense his proportionate part thereof, which shall be determined by the selectmen of the town as provided in sections four and thirty-seven to forty, inclusive, of chapter forty-nine. But no covenants or agreements by or between the owners or lessees of such land shall be affected by the provisions of this section.

1871, 163. P. S. 190, § 49.

Ice Ponds.

SECTION 41. An owner or lessee of land which is used for an ice pond may erect and, between the first day of November and the first day of March, maintain a dam across a stream not navigable, for the purpose of making an ice pond by flowing adjoining land, subject to the provisions of this chapter, so far as applicable, if he annually pays to the owner of land which may

be overflowed or injured thereby the amount of the tax which may from time to time be assessed on such land; but such dam shall not be erected without the consent of all of the owners of the land which would be flowed by it, unless the person or corporation proposing to erect it shall furnish to such owners as do not consent to the erection security, satisfactory to them or approved by a justice of a court of record or by a master in chancery, for the payment of any damages which may be caused by flowing the land of such owners.

1898, 480.

IV. GAME AND DOG STATUTES.

1. DEER.

ACTS OF 1913, CHAPTER 529.

Taking or Killing of Deer regulated.

SECTION 1 (*as amended by 1913, 744, and 1914, 453*). It shall be unlawful, except as hereinafter provided, to hunt, pursue, wound or kill a deer, or to sell or offer for sale, or to have in possession for the purpose of sale, a deer or the flesh of a deer captured or killed in this commonwealth: *provided*, that this act shall not apply to a tame deer belonging to any person and kept on his own premises; and *provided, further*, that any farmer or other person may, on land owned or occupied by him, or, with the consent of the owner, upon land adjacent thereto, pursue, wound or kill any deer which he has reasonable cause to believe has damaged or is about to damage crops, fruit or ornamental trees, except grass growing on uncultivated land; and he may authorize any member of his family, or any person employed by him so to pursue, wound or kill a deer under the circumstances above specified. In the event of the wounding or killing of a deer as aforesaid, it shall be the duty of the person by whom or under whose direction the deer was wounded or killed to mail or otherwise transmit within twenty-four hours thereafter to the commissioners on fisheries and game a report in writing signed by him of the facts relative to the said wounding or killing. The said report shall state the time and place of the wounding or killing, and the kind of tree or crop injured or destroyed, or about to be injured or destroyed, by the deer. It shall be unlawful to sell or offer for sale the whole or any part of a deer killed under the aforesaid provision.

Open Season established.

SECTION 2. Any person who is duly authorized or licensed to hunt in this commonwealth according to the provisions of law, may, between sunrise of the third Monday of November and sunset of the following Saturday, hunt, pursue, take or kill by the use of a shotgun, a wild deer, subject to the following restrictions and provisions: — No person shall kill more than one deer under the provisions of this section or have in possession more

than one deer killed under the provisions of this section. No deer shall be hunted, taken or killed on land posted in accordance with the provisions of section fourteen of chapter ninety-two of the Revised Laws, or on land under the control of the metropolitan park commission or of the metropolitan water and sewerage board, or in violation of any city ordinance or town by-law, or in any state reservation, or by any method prohibited by law. It shall be unlawful to make, set or use any trap, salt lick or other device for the purpose of ensnaring, enticing, taking, injuring or killing a deer. Whoever wounds or kills a deer under the provisions of this section shall make a report in writing, signed by him, and mailed or otherwise transmitted within twenty-four hours of such wounding or killing, to the commissioners on fisheries and game, stating the facts relative to the wounding or killing.

Not to affect Certain Provisions of Law.

SECTION 3. Nothing in this act shall be construed as affecting the provisions of section eighteen of chapter ninety-two of the Revised Laws, as amended by chapter two hundred and forty-five of the acts of the year nineteen hundred and five.

Repeal.

SECTION 4. Section seventeen of chapter ninety-two of the Revised Laws, as amended by chapter three hundred and seven of the acts of the year nineteen hundred and seven, and by chapter three hundred and seventy-seven of the acts of the year nineteen hundred and eight, and by chapter three hundred and ninety-six of the acts of the year nineteen hundred and nine is hereby repealed; chapter five hundred and forty-five of the acts of the year nineteen hundred and ten and chapter three hundred and eighty-eight of the acts of the year nineteen hundred and twelve are also hereby repealed; but the said repeals shall not affect any suit or other proceeding now pending.

Penalty.

SECTION 5. Any violation of any provision of this act shall be punished by a fine not exceeding one hundred dollars for each offence.

Acts of 1913, Chapter 744.

Protection of Moose.

Section 1. The provisions of this act authorizing the killing of deer under the circumstances and at the times specified above shall not apply to moose; and it shall be unlawful in this commonwealth to hunt, pursue, take, wound or kill a moose at any time, or to sell, offer for sale, or to have in possession the flesh of a moose captured or killed in this commonwealth.

Revised Laws, Chapter 92, § 18, as amended by Acts of 1913, Chapter 552.

Protection of Deer from Dogs.

Hunting, etc., of Deer by Dogs prohibited.

Section 18. Any of the commissioners on fisheries and game, or their deputies, or any member of the district police, or any officer qualified to serve criminal process, may kill a dog found chasing or hunting deer at any time if the dog is used for such purpose with the knowledge and consent of his owner or keeper, and the owner or keeper of the dog shall be punished by a fine of fifty dollars. If a dog has twice been found chasing or hunting deer, and if the owner or keeper of the dog has so been notified on each occasion by the commissioners on fisheries and game, it shall be a presumption of law, if the same dog is thereafter found chasing or hunting deer, that such chasing or hunting was with the knowledge and consent of the said owner or keeper, unless the contrary is shown by evidence.

Acts of 1903, Chapter 407, as amended by Acts of 1912, Chapter 438.

Damages from Deer Loss.

Payment of Damages caused by Deer.

Section 1. Whoever suffers loss by the eating, browsing or trampling of his fruit or ornamental trees, vegetables, produce or crops by wild deer may, if the damage is done in a city, inform the officer of police of said city who shall be designated to receive such information by the mayor, and if the damage is done in a town, may inform the chairman of the selectmen of the town wherein the damage was done, who shall proceed to the premises where the damage was done and determine whether the same was inflicted by deer, and if so, appraise the amount thereof if it does not exceed twenty dollars. If, in the opinion of said officer of police or chairman, the amount of said damage exceeds twenty

dollars, he shall appoint two disinterested persons, who, with himself, shall appraise under oath the amount thereof. The said officer of police or chairman shall return a certificate of the damages found, except in the county of Suffolk, to the treasurer of the county in which the damage is done, within ten days after such appraisal is made. The treasurer shall thereupon submit the same to the county commissioners, who, within thirty days, shall examine all such bills, and if any doubt exists, may summon the appraisers and all parties interested and make such examination as they may think proper, and he shall transmit such bills, properly approved, to the auditor of accounts, and they, including the cost of appraisal, shall be paid out of the treasury of the commonwealth in the same manner as other claims against the commonwealth. In the county of Suffolk the certificate of damages shall be returned to the treasurer of the city or town in which the damage is done, who shall exercise and perform the rights and duties hereby conferred and imposed upon the county commissioners in other counties. The appraisers shall receive from the commonwealth one dollar each for every such examination made by them, and shall receive twenty cents a mile, one way, for their necessary travel.

2. DOG DAMAGES.

REVISED LAWS, CHAPTER 102.

Damage by Dogs.

SECTION 146. The owner or keeper of a dog shall be liable in an action of tort to a person injured by it in double the amount of damages sustained by him.

1791, 38, § 4. 1797, 53, § 5. 1798, 54, § 3. 1812, 146, § 3. R. S. 58, § 13. G. S. 88, § 59. P. S. 102, § 93.

Buddington *v.* Shearer, 20 Pick. 477 (see page 145).
McCarthy *v.* Guild, 12 Met. 291 (see page 146).
Mitchell *v.* Clapp, 12 Cush. 278.
Brewer *v.* Crosby, 11 Gray, 29 (see page 145).
Sherman *v.* Favour, 1 Allen, 191 (see page 145).
Barrett *v.* Malden & Melrose R.R. Co., 3 Allen, 101.
Pressey *v.* Wirth, 3 Allen, 191 (see page 146).
Le Forest *v.* Tolman, 117 Mass. 109.
Searles *v.* Ladd, 123 Mass. 580.
Collingill *v.* Haverhill, 128 Mass. 218.
White *v.* Lang, 128 Mass. 598.
Hathaway *v.* Tinkham, 148 Mass. 85 (see page 145).
McLaughlin *v.* Kemp, 152 Mass. 7.
Whittemore *v.* Thomas, 153 Mass. 347.
Galvin *v.* Parker, 154 Mass. 346.
Boulester *v.* Parsons, 161 Mass. 182 (see page 145).
Raymond *v.* Hodgson, 161 Mass. 184.
Boylan *v.* Everett, 172 Mass. 453.

When Dogs may be killed.

SECTION 147. Any person may kill a dog which suddenly assaults him while he is peaceably walking or riding outside the enclosure of its owner or keeper; and any person may kill a dog found out of the enclosure or immediate care of its owner or keeper, worrying, wounding or killing neat cattle, sheep or lambs.

1791, 38, § 2. R. S. 58, § 14. G. S. 88, § 60. P. S. 102, § 94.

Nesbett *v.* Wilbur, 177 Mass. 200 (see page 144).

Complaint as to Dangerous Dogs.

SECTION 148. If a person who has been so assaulted, or who finds a dog strolling outside of the enclosure or immediate care of its owner or keeper, within forty-eight hours after such assault or finding makes oath thereof before a police, district or municipal court or trial justice or before the clerk of the city or town in which the owner or keeper of the dog dwells and that he suspects the dog to be dangerous or mischievous, and gives notice thereof to its owner or keeper by delivering to him a certificate of such oath signed by such court or justice or clerk, the owner or keeper shall forthwith kill or confine such dog; and if he neglects so to do for twenty-four hours after such notice, he shall forfeit ten dollars.

1791, 38, § 2. R. S. 58, § 16. G. S. 88, § 61. P. S. 102, § 95.

After Notice, any Person may kill.

SECTION 149. If such dog is licensed under the provisions of this chapter, the forfeiture under the provisions of the preceding section shall not be incurred unless the dog is proved to be mischievous or dangerous. Any person may kill a licensed dog which has been proved to be mischievous or dangerous under the provisions of this section if it is again found strolling outside of the enclosure or immediate care of its owner or keeper.

1791, 38, § 3. R. S. 58, § 16. G. S. 88, § 62. 1865, 197, § 4. 1867, 130, § 14. P. S. 102, § 96.

Liability of Owner for Further Damage.

SECTION 150. If a dog, after such notice to its owner or keeper, by such assault wounds any person or causes him to be wounded, or worries, wounds or kills any neat cattle, sheep or lambs, or does any other mischief, the owner or keeper shall be

liable in an action of tort to the person injured thereby in treble the amount of damages sustained by him.

1791, 38, § 4. R. S. 58, § 17. G. S. 88, § 63. P. S. 102, § 97.

Loss from Dogs worrying Sheep. Payment of Certain Damages, etc.

SECTION 151 (*as amended by 1903, 100; 1904, 283; 1911, 392*). Whoever suffers loss by the worrying, maiming or killing of his sheep, lambs, fowls or other domestic animals by dogs, outside the enclosure of the owners or keepers of such dogs, may, if the damage is done in a city, inform the officer of police of said city who shall be designated to receive such information by the authority appointing the police, and, if the damage is done in a town, may inform the chairman of the selectmen of the town wherein the damage was done, who shall proceed to the premises where the damage was done and determine whether the same was inflicted by dogs, and if so, appraise the amount thereof if it does not exceed twenty dollars. If in the opinion of said officer of police or chairman the amount of said damage exceeds twenty dollars, the damage shall be appraised, under oath, by three persons, of whom one shall be such officer of police or chairman, one shall be appointed by the person alleged to be damaged, and the third shall be appointed by the other two. The said appraisers shall also consider and include in such damages the labor and time necessarily expended in the finding and collecting of the sheep, lambs, fowls or other domestic animals so injured or separated and the value of those lost or otherwise damaged by dogs. The said officer of police or chairman shall return a certificate of the damages found, except in the county of Suffolk, to the treasurer of the county in which the damage is done, within ten days after such appraisal is made. The treasurer shall thereupon submit the same to the county commissioners, who, within thirty days, shall examine all such bills, and if any doubt exists, may summon the appraisers and all parties interested and make such examination as they may think proper, and shall issue an order upon the treasurer of the county in which the damage was done for such amount, if any, as they decide to be just. The treasurer shall pay all orders drawn upon him in full, for the above purpose, out of any money in the county treasury and payments made therefor shall be charged to the dog fund. The appraiser shall receive from the county, or in the county of Suffolk, from the city or town treasurer, out of the money received under the provisions of this chapter relating to dogs, one

dollar each for every such examination made by them, and also twenty cents a mile one way for their necessary travel; and the officer of the chairman of selectmen acting in the case shall receive twenty cents a mile one way for his necessary travel.

1715–16, 16, § 2.	1744–5, 25, § 2.	G. S. 88, § 64.	P. S. 102, § 98.
1719, 20, § 2.	1791, 38, § 4.	1864, 299, § 9.	1886, 259.
1728–9, 10.	1858, 139, § 4.	1867, 130, § 10.	1889, 454, § 1.
1737–8, 10, § 2.	1859, 225, § 6.		

Cheney *v.* Holden, 16 Gray, 125.
Osborn *v.* Selectmen of Lenox, 2 Allen, 207 (see page 144).
Worcester *v.* Ashworth, 160 Mass. 186 (see page 143).

Rewards for killing Dogs found to have worried, etc., Domestic Animals.

SECTION 152 (*as amended by 1905, 106*). The mayor and aldermen of a city or the selectmen of a town may offer a reward of not more than twenty-five dollars for the killing of any dog found to have worried, maimed or killed any sheep, lambs, fowls or other domestic animals, thereby causing damages for which their owner may become entitled to compensation from the dog fund as provided for in the preceding section, or for evidence which shall determine to the satisfaction of such mayor and aldermen or such selectmen who is the owner or keeper of the dog by which such damage is done. The county commissioners, except in the county of Suffolk, are authorized and directed to pay the said reward from the dog fund upon a certificate signed by the mayor and aldermen or selectmen.

1889, 454, § 2.

Worcester *v.* Ashworth, 160 Mass. 186 (see page 143).

Hearing to determine Ownership of Dog.

SECTION 153. If the mayor and aldermen of a city or the selectmen of a town determine, after notice to parties interested and a hearing, who is the owner or keeper of any dog which is found to have worried, maimed or killed any sheep, lambs, fowls or other domestic animals, thereby causing damages for which their owner may become entitled to compensation from the dog fund as provided for in section one hundred and fifty-one, they shall serve upon the owner or keeper of such dog a notice directing him within twenty-four hours to kill or confine the dog.

1889, 454, § 3.

Penalty on Owner for not confining Dog.

SECTION 154. A person who owns or keeps a dog, who has received such notice and does not within twenty-four hours kill such dog or thereafter keep it on his premises or under the immediate restraint and control of some person shall be punished by a fine of not more than twenty-five dollars; and any person may kill such dog if it is found strolling outside of the enclosure or immediate care of its owner or keeper.

1889, 454, § 4.

Appointment of Person to investigate Damages, etc.

SECTION 155 (*as amended by 1904, 142; 1907, 241; 1910, 392*). The county commissioners, except in the county of Suffolk, shall appoint one and may appoint not more than four suitable persons, all residing in the county, any one of which persons shall, at the request of said commissioners, or of the chairman of the selectmen of a town or officer of the police designated as provided in section one hundred and fifty-one, investigate any case of damages done by a dog of which such commissioners, chairman or officer shall have been informed as provided in said section, and if he believes that the evidence is sufficient to sustain an action against the owner or keeper of a dog as provided in section one hundred and sixty-two and believes that such owner or keeper is able to satisfy any judgment which may be recovered in such action, he shall, unless such owner or keeper before action brought pays him such amount in settlement of such damages as he deems reasonable, bring such action. It may be brought in his own name and in the county in which he resides, and he shall prosecute it. Said officer shall have concurrent jurisdiction with the officer or officers appointed under authority of section one hundred and forty-three. All awards received or recovered by him in such actions shall be paid over to the county treasurer and placed to the credit of the dog fund. The county treasurer shall pay out of the dog fund such reasonable compensation as the county commissioners shall allow to such person for his services and necessary expenses and the reasonable expense of prosecuting such actions. The person or persons appointed may be removed at any time by the county commissioners, and in counties in which they are appointed, the county treasurer shall not be authorized to bring such actions.

1889, 454, § 5. 1894, 309, § 1.

Worcester *v.* Ashworth, 160 Mass. 186 (see page 143).

Persons damaged to have Choice of Remedy.

SECTION 156. The owner of sheep, lambs or other domestic animals which may have been worried, maimed or killed by dogs shall have his election to proceed under the provisions of section one hundred and fifty-one or of sections one hundred and forty-eight, one hundred and forty-nine and one hundred and fifty; but, having signified his election by proceeding in either mode, he shall not have the other remedy.

1859, 225, § 8. G. S. 88, § 65. 1864, 299, § 99. 1867, 130, § 10. P. S. 102, § 99.

Who to act in Absence of Chairman of Selectmen.

SECTION 157. In the absence or illness of the chairman of the selectmen, any one of the selectmen of the town who may be duly informed of damage supposed to have been done by dogs shall discharge forthwith the duties imposed by section one hundred and fifty-one upon the chairman.

1867, 130, § 10. P. S. 102, § 100.

Selectmen may order Dogs to be muzzled, etc.

SECTION 158. The mayor and aldermen of a city or the selectmen of a town may order that any dog within the limits of such city or town, respectively, shall be muzzled or restrained from running at large during such time as shall be prescribed by such order. After passing such order and posting a certified copy thereof in two or more public places in such city or town, or, if a daily newspaper is published in such city or town, by publishing such copy once in such newspaper, the mayor and aldermen or selectmen may issue their warrant to one or more of the police officers or constables of such city or town, who shall, after twenty-four hours from the publication of such notice, kill all dogs found unmuzzled or running at large contrary to such order, and who shall receive such compensation therefor as is provided in section one hundred and forty-three.

1877, 167, §§ 1, 2. P. S. 102, §§ 101, 102.

Service of Order. Penalty.

SECTION 159. The mayor and aldermen or selectmen may cause service of such order to be made upon the owner or keeper of the dog by causing a certified copy thereof to be delivered to him, and if he refuses or neglects for twelve hours thereafter to

muzzle or restrain such dog as so required, he shall be punished by a fine of not more than twenty-five dollars.

1877, 167, § 3. P. S. 102, § 103.

Penalty on Town Officers.

SECTION 160. A county, city or town officer who refuses or wilfully neglects to perform the duties imposed upon him by the provisions of this chapter relating to dogs shall be punished by a fine of not more than one hundred dollars, which shall be paid, except in the county of Suffolk, into the county treasury. Whoever is aggrieved by such refusal or neglect may report the same forthwith to the district attorney of his district.

1858, 139, § 6. G. S. 88, § 66. 1867, 130, § 11.
1859, 225, § 13. 1864, 299, § 10. P. S. 102, § 104.

In Suffolk, Money from Licenses to be paid into City Treasury.

SECTION 161. In the county of Suffolk, all money received for licenses or recovered as fines or penalties under the provisions of this chapter relating to dogs shall be paid into the treasury of the city or town in which said licenses are issued or said fines or penalties recovered. All claims for damages done by dogs in Suffolk county shall be determined by appraisers as specified in section one hundred and fifty-one and, when approved by the board of aldermen or selectmen of the city or town in which the damage was done, shall be paid in full on the first Wednesday of January of each year by the treasurer of such city or town, if the gross amount received by him and not previously paid out under the provisions of this chapter relating to dogs is sufficient therefor; otherwise, such amount shall be divided pro rata among such claimants in full discharge of their claims.

1864, 299, § 12. 1867, 130, § 13. 1869, 250, § 1. P. S. 102, § 105.

Owner, etc., of Dog liable to County or City, etc.

SECTION 162. The owner or keeper of a dog which is doing damage to sheep, lambs or other domestic animals shall be liable in an action of tort to the county for all damages so done which the county commissioners thereof have ordered to be paid, as provided in this chapter. The county treasurer may, and if so ordered by the county commissioners shall, bring such action. In the county of Suffolk, such owner or keeper shall be liable in like manner to the city or town for damages so done therein which the board of aldermen or selectmen, respectively, have so

ordered to be paid; and the city or town treasurer may, and if so ordered by the board of aldermen or selectmen shall, bring such action.

1858, 139, § 5. 1859, 225, § 7. G. S. 88, § 64. 1864, 299, § 11. 1867, 130, §§ 12, 13. P. S. 102, § 106.

Worcester *v.* Ashworth, 160 Mass. 186 (see page 143).

Unexpended Money, how appropriated.

SECTION 163. Money which is received by a county treasurer under the provisions of the preceding sections relating to dogs and is not paid out for damages shall, in January, be paid back to the treasurers of the cities and towns in proportion to the amounts received from such cities and towns; and the money so refunded shall be expended for the support of public libraries or schools. In the county of Suffolk, money so received by the city or town treasurer and not so paid out shall be expended by the school committee for the support of public schools.

1865, 197, § 3. 1867, 130, § 12. 1869, 250, § 1. P. S. 102, § 107.

Form of Warrant for killing Dogs.

SECTION 164. The warrant required to be issued by the provisions of section one hundred and forty-three may be in the following form: —

COMMONWEALTH OF MASSACHUSETTS.

[Seal.]

M , ss. To , constable of the city (or town) of

In the name of the Commonwealth of Massachusetts, you are hereby required to proceed forthwith to kill or cause to be killed all dogs within the said town not duly licensed and collared according to the provisions of chapter one hundred and two of the Revised Laws, and you are further required to make and enter complaint against the owner or keeper of every such dog.

Hereof fail not, and make due return of this warrant with your doings therein, stating the number of dogs killed and the names of the owners or keepers thereof, and whether all unlicensed dogs in said city (or town) have been killed, and the names of persons against whom complaints have been made under the provisions of said chapter, and whether complaints have been made and entered against all the persons who have failed to comply with the provisions of said chapter, on or before the first day of October next.

Given under my hand and seal at aforesaid, the day of , in the year nineteen hundred and .

Mayor of [or Chairman of the Selectmen of]

1867, 136, § 16. P. S. 102, § 108.

Towns may make By-laws, etc.

SECTION 165. A city or town may make additional ordinances or by-laws relative to the licensing and restraining of dogs and may affix penalties of not more than ten dollars for a breach thereof; but such ordinances or by-laws shall relate only to dogs owned or kept in such city or town; and the annual fee required for a license under the provisions of section one hundred and thirty shall in no case be more than one dollar in addition to the amount required by said section.

1824, 139. R. S. 58, § 10. 1850, 245. 1859, 225, § 14. G. S. 88, § 67. P. S. 102, § 109.

Commonwealth *v.* Dow, 10 Met. 382 (see page 146).

Fines, etc., how recovered.

SECTION 166. All fines and penalties provided in the preceding sections relating to dogs may be recovered before a police, district or municipal court or trial justice in the county in which the offence was committed.

G. S. 88, § 68. P. S. 102, § 110.

ACTS OF 1902, CHAPTER 226, AS AMENDED BY ACTS OF 1904, CHAPTER 127.

PROTECTING DOMESTIC ANIMALS FROM INJURY BY DOGS.

Protection of Domestic Animals from Injury by Dogs.

It shall be lawful for the county commissioners of any county, or their agents thereto authorized in writing, to enter upon the premises of the owner of any dog known to them to have worried or killed sheep, lambs, fowls or other domestic animals, and then and there to kill such dog, unless such owner whose premises are thus entered for the said purpose shall give a bond in the sum of two hundred dollars, with sufficient sureties, to be approved by the county commissioners, the condition of the bond being that the dog shall refrain from killing or worrying sheep, lambs, fowls or other domestic animals for the space of twelve months next ensuing. And if the owner of the dog declares his intention to give such a bond the said county commissioners or their agents shall allow him reasonable time in which to procure and prepare the same and to present it to them, or to file it with the clerk of the city or town in which the said owner resides.

3. SALE OF RABBITS.

ACTS OF 1911, CHAPTER 118.

Protection and Sale of Hares and Rabbits.

SECTION 1 (*as amended by 1914, 120*). It shall be unlawful to hunt, take or kill a hare or rabbit between the first day of March and the eleventh day of October, both inclusive, or to buy or sell or offer for sale a hare or rabbit taken or killed during the said period in this commonwealth, or taken or killed at any time contrary to the laws of any other state or country. But any person may buy or sell hares or rabbits at any time: *provided*, that they were not taken or killed contrary to the laws of this commonwealth or of any other state or country.

Certain Acts Unlawful, etc.

SECTION 2. It shall be unlawful at any time to remove or attempt to remove a hare or rabbit from any hole in the ground or from any stone wall or from under any ledge or stone or log or tree, and it shall be unlawful to take or kill a hare or rabbit by a trap, snare or net, or for that purpose to construct or set a trap, snare or net, or to use a ferret. The possession of a ferret in a place where hares or rabbits might be taken or killed shall be prima facie evidence that the person having the ferret in possession has used it for taking and killing hares or rabbits contrary to law. Ferrets used in violation hereof shall be confiscated.

Certain Rights of Farmers, etc.

SECTION 3. This act shall not be construed to prohibit farmers and fruit growers from trapping rabbits in box traps at any time during the year: *provided*, first, that such trapping is done on land owned or leased by the person setting the trap and used for the raising of fruit, vegetables or other products by the person so trapping; secondly, that the person so trapping shall first have made an affidavit before a justice of the peace that hares or rabbits have injured fruit, vegetables or other products on his said premises and shall have forwarded the affidavit so made to the commissioners on fisheries and game; and thirdly, that the said commissioners have issued to him a permit so to trap. It shall be unlawful to barter or sell hares or rabbits trapped in accordance with the provisions of this section.

Repeal.

SECTION 4. Chapter four hundred and sixty-six of the acts of the year nineteen hundred and nine and section two of chapter five hundred and thirty-three of the acts of the year nineteen hundred and ten are hereby repealed.

Penalty.

SECTION 5. Whoever violates any provision of this act shall be punished by a fine not exceeding ten dollars for each offence.

4. PROPAGATION OF PHEASANTS.

ACTS OF 1909, CHAPTER 309.

Hunting of Pheasants regulated.

SECTION 1. It shall be unlawful to hunt, pursue, take or kill, sell or offer for sale or to have in possession, a pheasant of any kind or the flesh of any pheasant except as hereinafter provided.

Permission may be granted to rear Pheasants.

SECTION 2. Upon application to the commissioners on fisheries and game, written permission may be granted to any person to engage in the rearing of pheasants and to dispose of the same, under such rules and regulations, approved by the governor and council, as may be made from time to time by the commissioners; and such artificially propagated pheasants may be bought or sold or had in possession at any season of the year, and any person receiving such permission may hunt, pursue, take or kill such pheasants upon the land owned or leased by him.

Penalty.

SECTION 3. Whoever violates any provision of this act, or any rule or regulation made as aforesaid, shall be punished by a fine not exceeding fifty dollars for each bird or part thereof in respect to which the violation occurs.

Repeal.

SECTION 4. Chapter four hundred and seventy-seven of the acts of the year nineteen hundred and eight, except section four of said chapter, is hereby repealed.

ACTS OF 1914, CHAPTER 401.

KILLING OF PHEASANTS.

Open Season may be declared on Pheasants.

SECTION 1. The board of commissioners on fisheries and game may declare an open season on pheasants in any county of the commonwealth, in which such open season seems advisable, and may make such rules and regulations relating to bag limit, time and length of open season and varieties to be taken and all other matters connected with such open season as the said board may from time to time deem necessary or expedient.

Pheasants found damaging Crops may be captured or killed.

SECTION 2. A person may capture, pursue, wound or kill, upon land owned or occupied by him, a pheasant which he finds in the act of doing damage to any crop on cultivated land; and he may authorize a member of his family or person permanently employed by him on such land to capture, pursue, wound or kill a pheasant under the circumstances above specified. The person by whom or under whose direction a pheasant is so captured, wounded or killed shall within twenty-four hours report the facts in writing to the said board, stating the time, place and the number of pheasants so captured, wounded or killed.

Penalty.

SECTION 3. Whoever violates any provision of this act or any rule or regulation made under authority hereof shall be punished by a fine not exceeding fifty dollars for each bird or part thereof in respect to which the violation occurs.

Repeal.

SECTION 4. All acts and parts of acts inconsistent herewith are hereby repealed.

V. STATUTES RELATING TO MARKETING.

1. PUBLIC MARKETS.

GENERAL ACTS OF 1915, CHAPTER 119.

Certain Cities and Towns may establish Public Markets.

SECTION 1. All cities and all towns having a population of ten thousand or more are hereby authorized to provide and maintain public markets with suitable buildings and grounds. For this purpose, any such city or town may, with the approval of the state board of agriculture, take or acquire land by purchase or otherwise, with or without buildings, and may make alterations in buildings and construct new buildings on land so acquired.

Public Market Places.

SECTION 2. All cities and all towns having a population of ten thousand or more which do not maintain public markets under the provisions of section one hereof shall, within one year after the passage of this act, designate one or more streets or squares, or parts thereof, or other public places, which shall be suitably situated and shall be approved by the state board of agriculture, to be used by farmers and other persons as public market places.

Rules and Regulations.

SECTION 3 (*as added by G. A., 1916, 79*). Any city or town which maintains a public market or market place in accordance with the provisions of this act may make rules and regulations for the use and management thereof, subject to the approval of the secretary of the state board of agriculture, and may attach penalties for their violation.

2. WEIGHTS AND MEASURES OF FARM PRODUCE.

REVISED LAWS, CHAPTER 62.

Weight of Certain Commodities.

SECTION 3 (*as amended by 1902, 115, and 1911, 397*). The barrel of flour, measured by weight, shall contain one hundred and ninety-six pounds, the barrel of potatoes one hundred and sixty-five pounds, and the barrel of sweet potatoes one hundred and fifty pounds. 1894, 198, § 5.

Weight of Bushel.

SECTION 4 (*as amended by 1910, 297; 1912, 284; 1913, 176; G. A., 1915, 43*). The bushel of wheat shall contain sixty pounds; of Indian corn or of rye, fifty-six pounds; of barley, forty-eight pounds; of oats, thirty-two pounds; of corn meal, fifty pounds; of rye meal, fifty pounds; of smooth peas, sixty pounds; of wrinkled peas, fifty-six pounds; of soy beans (glycine hispida), fifty-eight pounds; of potatoes, sixty pounds; of apples, forty-eight pounds; of carrots, fifty pounds; of onions, fifty-two pounds; of clover seed, sixty pounds; of herdsgrass or timothy seed, forty-five pounds; of Japanese barnyard millet (panicum crusgalli), thirty-five pounds; of bran and shorts, twenty pounds; of flaxseed, fifty-five pounds; of coarse salt, seventy pounds; of fine salt, seventy pounds; of lime, seventy pounds; of sweet potatoes, fifty-four pounds; of beans, sixty pounds; of lima beans, fifty-six pounds; of scarlet runner pole beans or of white runner pole beans, fifty pounds; of broad Windsor beans, forty-seven pounds; of dried apples, twenty-five pounds; of dried peaches, thirty-three pounds; of rough rice, forty-four pounds; of upland cotton seed, thirty pounds; of sea island cotton seed, forty-four pounds; of buckwheat, forty-eight pounds; of beets, sixty pounds; of cranberries, thirty-two pounds; of pears, fifty-eight pounds; of parsnips, forty-five pounds; of roasted peanuts, twenty pounds; of green peanuts, twenty-two pounds; of peaches, forty-eight pounds; of tomatoes, fifty-six pounds; of turnips, fifty-five pounds; of quinces, forty-eight pounds; of string beans, twenty-four pounds; of shell beans, twenty-eight pounds; of unshelled green peas, twenty-eight pounds; of dandelions, twelve pounds; of spinach, twelve pounds; of beet greens, twelve pounds; of kale, twelve pounds; and of parsley, eight pounds.

Weight of Meal.

SECTION 5. In this commonwealth, a bushel of cracked corn or feed or any meal except oatmeal shall be fifty pounds, and a cental shall be one hundred pounds.

1840, 82, § 1.
1855, 232, § 1.
G. S. 49, § 4.
1880, 158, § 1.
P. S. 60, § 22.
1888, 414, § 2.

3. MILLERS.

REVISED LAWS, CHAPTER 196.

Millers to keep Scales, etc.

SECTION 63. A miller occupying and using a grist mill who neglects to provide himself with scales and weights or a vibrating steelyard to weigh corn, grain and meal to and from the mill, when required, or who refuses so to weigh corn, grain or meal when required, shall for each offence forfeit to any person who sues therefor not more than five dollars.

C. L. 106, § 2. 1728–9, 6, §§ 1, 2. 1795, 74, § 8. G. S. 149, § 65.
1709–10, 3, § 3. 1762–3, 19, § 5. R. S. 116, § 59.

Toll.

SECTION 64. The toll for grinding any kind of grain shall not exceed one sixteenth part thereof.

C. L. 106, § 2. 1709–10, 3, § 3. 1728–9, 6, § 2. 1762–3, 19, § 6.
1795, 74, § 9. R. S. 116, § 60. G. S. 149, § 66. P. S. 190, § 72.

4. INSPECTION AND SALES ACT.

REVISED LAWS, CHAPTER 57.

BEEF.

Weighers of Beef.

SECTION 1. In each city or town where beef cattle are sold for the purpose of market or barrelling, the mayor and aldermen or selectmen shall appoint one or more persons, conveniently situated in such city or town and not dealers in cattle, to be weighers of beef, who shall be sworn.

1815, 99, § 1. R. S. 28, § 36. G. S. 49, § 3. P. S. 60, § 1.

Weighers' Fees.

SECTION 2. Fees for weighing cattle shall be paid by the vendor and shall be twenty cents for each of the first five; fifteen cents for each of the second five; ten cents each from eleven to twenty, inclusive; five cents for each above twenty; also twelve and one half cents for each certificate which shall contain the weight of each of the cattle weighed for one person, unless the vendor requests a division thereof.

1815, 99, § 3. R. S. 28, § 38. G. S. 49, § 4. P. S. 60, § 2.

Fruits, Nuts and Vegetables.

Sale of Fruits, Vegetables, etc., regulated.

Section 21 (*as amended by 1912, 246, and 1913, 713*). All fruits, vegetables and nuts, except as hereinafter otherwise provided, shall be sold at retail by dry measure, weight or by numerical count, and all fruits and vegetables for which a legal weight has been established, except peas and beans sold in quantities of four quarts or less for seeding or planting purposes, shall be sold at retail only by weight or numerical count. Whoever violates any provision of this section shall forfeit a sum not exceeding ten dollars for each offence.

Sale of Certain Berries regulated.

Section 22 (*as amended by 1909, 350*). Baskets or other receptacles holding one quart or less which are used or intended to be used in the sale of strawberries, blackberries, cherries, currants, blueberries, raspberries or gooseberries shall be of the capacity of one quart, one pint or one half pint, Massachusetts standard dry measure.

Penalty.

Whoever sells or offers for sale a basket or other receptacle holding one quart or less to be used in the sale of any of the aforesaid fruit which does not conform to said standard, and whoever sells or offers for sale any of the aforesaid fruit in any basket or other receptacle holding one quart or less which does not conform to said standard, shall be punished by a fine of not less than five nor more than ten dollars for each offence. Said baskets or other receptacles shall not be required to be tested and sealed as provided by chapter sixty-two, but the sealer or deputy sealer of weights and measures of any city or town or the deputy sealer of the commonwealth may, if he so desires, and shall, upon complaint, test the capacity of any basket or other receptacle in which any of the aforesaid fruit is sold or intended to be sold; and if the same is found to contain less than the standard measure he shall seize the same and make complaint against the vendor.

Nuts, etc., measured by the Strike.

SECTION 23. Chestnuts, walnuts, cranberries and all other berries when sold shall, subject to the provisions of the preceding section, be measured by the strike or level measures.

1850, 261, § 1. 1851, 238, § 1. G. S. 49, § 62. P. S. 60, § 19.

ACTS OF 1911, CHAPTER 380, SUPERSEDING REVISED LAWS, CHAPTER 57, SECTION 24.

Legal and Standard Barrel and Crate for Cranberries.

SECTION 1. The legal and standard barrel for cranberries shall measure not less than twenty-five and one fourth inches between the heads, inside; the diameter of the head shall be not less than sixteen and one fourth inches, including the bevelled edge; the outside bilge circumference shall measure not less than fifty-eight and one half inches; the thickness of the staves shall be not greater than four tenths of an inch. The legal and standard crate for cranberries shall measure seven and one half inches, by twelve inches, by twenty-two inches, inside, exclusive of any interior partition or support, and shall have an interior capacity of one thousand nine hundred and eighty cubic inches; but any square or oblong crate or box of different form, but of as great interior capacity, shall be considered a legal standard crate. It shall be lawful to use for the sale and delivery of cranberries square or oblong packages which contain one half crate or one quarter crate: *provided*, that such packages have an interior capacity, exclusive of any partition or support, of nine hundred and ninety and four hundred and ninety-five cubic inches, respectively. No barrel, crate, one half crate or one quarter crate, intended for the sale or delivery of cranberries, except of the standard measure herein specified and plainly marked with the words "Massachusetts Standard Measure", shall be manufactured or sold. No person shall so mark any barrel or other package so used, or intended to be used, unless its interior capacity is as great as the capacity herein specified for such package.

Massachusetts Standard Measure.

SECTION 2. Every barrel, crate, one half crate or one quarter crate used for the sale or delivery of cranberries shall be of the Massachusetts standard measure, and shall be marked as required by this act. No person shall use any barrel, crate, one half crate or one quarter crate for such sale or delivery the

capacity of which is less than that of the corresponding standard package herein provided for. Any person violating any of the provisions of this act shall be punished by a fine not exceeding one hundred dollars. The sealers of weights and measures of the several cities and towns shall cause the provisions of this act to be enforced.

Net Weight.

SECTION 3. It shall be lawful to use for the sale and delivery of cranberries packages containing one, two or four pounds of cranberries net weight: *provided*, that said net weight is plainly stamped on the top or side of each package.

REVISED LAWS, CHAPTER 57.

GRAIN AND MEAL.

Grain and Meal, how sold.

SECTION 25. In all contracts for the sale and delivery of wheat, corn, rye, oats, barley, buckwheat, cracked corn, ground corn or corn meal, ground rye or rye meal, or feed, or any other meal except oatmeal, cider apples, beans or peas, the same shall, except as provided in chapter sixty-two, be bargained for and sold either by the bushel or by the cental.

1813, 51. R. S. 28, § 160. 1840, 82, § 1. 1855, 232, § 1. G. S. 49, § 63. 1880, 158, § 2. P. S. 60, § 21. 1888, 414, § 1.

Eaton *v.* Kegan, 114 Mass. 433 (see page 147).

Measurers to be appointed.

SECTION 26. The mayor and aldermen of cities and selectmen of towns shall annually appoint one or more measurers of grain; and if only one is appointed by them, they may authorize him to appoint deputy-measurers.

C. L. 156, § 2. 1742-3, 4, § 5. 1762-3, 19, § 2. 1855, 232, § 2; 422. G. S. 49, § 65. P. S. 60, § 23.

Duties of Measurers.

SECTION 27. Each of such measurers and deputies shall, upon request of a party to a contract for the sale by the bushel of any quantity exceeding one bushel of either of the articles mentioned in section four of chapter sixty-two, ascertain the weight thereof and give a certificate of the number of bushels, as ascertained by weight according to the rule prescribed in said section.

1762-3, 19, § 3. 1855, 232, § 2; 422. G. S. 49, § 65. P. S. 60, § 24.

Penalty for Short Weight.

SECTION 28. Whoever sells or delivers by the bushel any quantity, exceeding one bushel, of either of the articles aforesaid, if the same has not been weighed by one of the measurers of grain, shall forfeit to the purchaser two dollars for every measured bushel so delivered which does not contain the required number of pounds.

1840, 82, § 2. 1855, 232, § 3. G. S. 49, § 66. P. S. 60, § 25.

Certificate of Sale by Cental.

SECTION 29. If said articles are sold by the cental, the measurers and their deputies, upon application as before provided, shall give a certificate of the number of centals of the same; and whoever sells and delivers a quantity of the same exceeding one cental, if it has not been weighed by said measurers, shall forfeit to the purchaser ten dollars for every lot, purporting to be a cental, which contains less than one hundred pounds.

1880, 158, § 3. P. S. 60, § 26.

Fees of Measurers.

SECTION 30. The fees of measurers of grain shall be prescribed by the mayor and aldermen or by the selectmen of the several places in which they are appointed, and one-half shall be paid by the seller and one-half by the purchaser.

1762-3, 19, § 3. 1855, 232, § 4. G. S. 49, § 67. P. S. 60, § 27.

HAY AND STRAW.

Weighers of Hay.

SECTION 35. If the city council of a city or a town accepts the provisions of this section or has accepted the corresponding provisions of earlier laws, the mayor and aldermen or selectmen may from time to time appoint, for a term not exceeding one year, weighers of hay who shall have the superintendence of the hay scales belonging to such city or town, and shall weigh hay offered for sale therein and any other article offered to be weighed. Such weighers of hay may be at any time removed by such mayor and aldermen or selectmen. Cities and towns may establish ordinances and by-laws for the regulation of hay scales and of the compensation of weighers of hay. A person who, not having been so appointed, sets up hay scales in a city or town for

the purpose of weighing hay or other articles shall forfeit to the use of such city or town twenty dollars a month, so long as such scales are continued.

1824, 102. R. S. 15, § 38; 28, §§ 95–98. G. S. 18, § 37; 49, §§ 72–75. P. S. 60, §§ 32–34.

Inspectors of Pressed Hay and Straw.

SECTION 36. The mayor and aldermen of a city or the selectmen of a town in which pressed or bundled hay or straw is sold may, on the petition of ten or more voters thereof, annually appoint one or more inspectors of pressed or bundled hay and straw, who shall be sworn. They may remove any inspector so appointed, fill any vacancy and fix the fees for inspecting, weighing and marking, which shall be paid by the person employing the inspector.

1835, 126. 1847, 246, §§ 1, 2, 6. G. S. 49, §§ 78, 82. 1861, 67. P. S. 60, §§ 35, 39.

Duties of Inspectors of Pressed Hay and Straw.

SECTION 37. Each inspector shall provide himself with proper scales, weights, seals and other suitable instruments and, on request of the owner or seller, shall inspect and weigh all pressed or bundled hay and straw within the limits of the city, town or ward for which he may be appointed.

1847, 246, §§ 3, 5. G. S. 49, §§ 79, 81. 1861, 67. P. S. 60, §§ 36, 38.

Pressed Hay and Straw, how Numbered and Marked.

SECTION 38. Bales or bundles of hay or straw so inspected which are found to be sweet, of good quality and free from damage or improper mixture shall be branded or marked "No. 1." Such bales or bundles of hay or straw of a secondary quality shall be branded or marked "No. 2." Bales or bundles of hay or straw found to be wet or damaged, or which contain substances not valuable as hay or straw, as the case may be, shall be branded or marked "Bad." Each bale or bundle so inspected shall be branded or marked with the name of the inspector, the city or town for which he is appointed, the month and year when the inspection is made and the net weight of the bundle.

1836, 240, § 1. 1847, 246, § 4. G. S. 49, § 80. 1861, 67. P. S. 60, § 37.

Penalty for selling without Inspection, etc.

SECTION 39 (*as amended by 1902, 459*). Whoever, in a city or town for which an inspector is appointed, sells pressed or bundled

hay or straw which has not been inspected and weighed as before provided, shall forfeit two dollars for each bale or bundle so sold. But no such inspection and weighing need be made unless the vendee at the time of purchase requires it.

1836, 240, § 2. G. S. 49, § 83. P. S. 60, § 40.
1847, 246, § 7. 1861, 67.

Potatoes, Onions and Salt.

Sale of Potatoes, Onions and Salt.

Section 60. In order to ascertain the mean or true weight of potatoes, onions or salt, the vendor shall weigh ten measures at least in every hundred bushels, five measures at least in every fifty bushels and two measures at least in every less quantity than fifty bushels sold, unless the vendor and vendee appoint a third person to measure or ascertain the weight or quantity of the same or unless they agree on such weight or quantity, or unless the amount sold does not exceed ten bushels and the vendee does not require the same to be weighed. Whoever sells potatoes, onions or salt, without so ascertaining the weight, shall forfeit two dollars for every bushel sold and in like proportion for a greater or less quantity, to the use of the person who first prosecutes therefor.

1817, 130. 1847, 14. G. S. 49, § 180.
R. S. 28, § 199. 1856, 271. P. S. 60, §§ 61, 62.

Timothy or Herdsgrass Seed.

Sale of Timothy regulated.

Section 65. All contracts for the sale and delivery of timothy or herdsgrass seed shall, except as provided in chapter sixty-three, be made by the standard weight prescribed in section four of chapter sixty-two. Whoever violates the provisions of this section shall forfeit not more than twenty dollars for each offence.

1862, 134. P. S. 60, §§ 67, 68.

Vinegar.

Penalty for selling Adulterated Vinegar.

Section 66 (*as amended by 1911, 600, § 1*). Whoever, himself or by his servant or agent or as the servant or agent of another person, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver, or exposes or offers for sale or exchange adulterated vinegar, or whoever labels, brands, or sells as cider vinegar or as apple vinegar, any vinegar

not the exclusive product of the alcoholic and subsequent acetous fermentation of the pure juice of fresh apples, shall be punished by a fine of not more than one hundred dollars.

Standard of Vinegar established.

SECTION 67 (*as amended by 1911, 600, § 2, and G. A., 1915, 239*). Vinegar shall contain no added or artificial coloring matter, and shall contain not less than four and one half per cent, by weight, of absolute acetic acid. Cider vinegar shall in addition contain not less than one and eight tenths per cent by weight, of cider vinegar solids. If vinegar contains any added or artificial coloring matter, or less than the required amount of acidity, or if cider vinegar contains less than the required amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated. The commissioner of health shall determine or cause to be determined, from time to time, analytical methods for the estimation of solids and of acetic acid in vinegar, and said methods shall be published in the monthly bulletin of the state department of health. No persons shall estimate the solids or the acetic acid content of vinegar for determining the composition or value of said vinegar as a basis for payment in buying or in selling, or for the purpose of inspection, by methods other than those published as herein described.

ACTS OF 1911, CHAPTER 600, SECTION 3, AS AMENDED BY GENERAL ACTS OF 1915, CHAPTER 158.

Marking of Receptacles containing Vinegar.

Each cask, barrel or other container used by a manufacturer or producer of or wholesale dealer in vinegar, to contain vinegar sold or offered for sale, shall be plainly marked with the name and place of business of the said manufacturer, producer or wholesale dealer, the kind of vinegar contained therein, the substance or substances from which the vinegar is made, and cider vinegar, if diluted with water, shall be distinctly and conspicuously labelled to indicate this fact, as for example, "Diluted to Legal Strength." Every compound or mixture or blend of vinegar shall be marked with the word "compound" or "mixture", with a statement of its constituents and the percentage of each constituent. The principal label, including the word "compound" or "mixture", if used on vinegar in wooden packages, shall be in Roman letters not less than one inch high, properly spaced and in straight parallel lines with no more than two

inches of space between each line. The marking of vinegar in other containers than wooden packages shall be governed by the provisions of sections eighteen and nineteen of chapter seventy-five of the Revised Laws. Whoever, himself, or by his servant or agent, violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

REVISED LAWS, CHAPTER 57.

Penalty for selling Deleterious Vinegar.

SECTION 68. Every person who manufactures for sale, or offers or exposes for sale, any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid or other ingredient injurious to health shall for each such offence be punished by a fine of not less than one hundred dollars.

1880, 113, § 2. P. S. 60, § 70.

ACTS OF 1911, CHAPTER 600.

Enforcement of Law.

SECTION 4. All officers or persons whose duty it is to enforce the laws relating to food and milk, shall enforce the laws relating to vinegar, and all statutes relating to food shall apply to vinegar so far as they may be applicable.

Repeal.

SECTION 5. Section sixty-nine of chapter fifty-seven of the Revised Laws is hereby repealed.

5. SALE OF MEAT AND PROVISIONS.

REVISED LAWS, CHAPTER 56, SECTION 70, AS AMENDED BY ACTS OF 1908, CHAPTER 411, SECTION 1; ACTS OF 1912, CHAPTER 448; AND ACTS OF 1914, CHAPTER 627.

Inspection of Meat, Provisions, etc.

SECTION 70. Boards of health of cities and towns, by themselves, their officers or agents, may inspect the carcasses of all slaughtered animals and all meat, fish, vegetables, produce, fruit or provisions of any kind found in their cities or towns, and for such purposes may enter any building, enclosure or other place in which such carcasses or articles are stored, kept or exposed for sale. If, on such inspection, it is found that such carcasses or articles are tainted, diseased, corrupted, decayed, unwholesome or, from any cause, unfit for food, the board of health shall seize

the same and cause it or them to be destroyed forthwith or disposed of otherwise than for food. All money received by the board of health for property disposed of as aforesaid shall, after deducting the expenses of said seizure, be paid to the owner of such property. If the board of health seizes or condemns any such carcass or meat for the reason that it is affected with a contagious disease, it shall immediately give notice to the board of cattle commissioners of the name of the owner or person in whose possession it was found, the nature of the disease and the disposition made of said meat or carcass.

Enforcement of Rules and Regulations, etc.

Boards of health of cities and towns may make and enforce rules and regulations, subject to the approval of the state board of health, as to the conditions under which all articles of food may be kept for sale or exposed for sale, in order to prevent contamination thereof and injury to the public health. Before the board of health of any city or town submits such rules and regulations to the state board of health for approval, it shall hold a public hearing thereon, of which notice shall be given by publication for two successive weeks, the first publication to be at least fourteen days prior to the date of the hearing, in a newspaper published in such city or town, or, if none is so published, in a newspaper published in the county in which such city or town is located. Any person affected by such rules and regulations, in the form in which they are presented to the state board of health for approval, may appeal to the said board for a further hearing, and said board shall not grant its approval to the rules and regulations concerning which such an appeal has been taken until it has held a public hearing thereon, advertised in the manner specified above in this section with reference to hearings before boards of health in cities and towns.

Not to prevent Exposure of Food Articles in Boston "Market Limits."

No regulation adopted in accordance with this act shall be construed as preventing the exposure of food articles for sale at retail in the Boston "market limits", as defined in the ordinances of the city of Boston of the year eighteen hundred and ninety-eight, on Saturdays or the day immediately preceding any holiday observed in Boston, but no area in said "market limits" where food articles are not at the time of the passage of this act

exposed for sale at retail on these days shall be occupied for the exposure of food articles without a permit from the board of health.

Penalty.

Whoever violates any rule or regulation of a board of health of a city or town approved by the state board of health shall be punished by a fine of not more than one hundred dollars.

1872, 231, § 2. 1875, 29, § 2. 1876, 180, § 2. P. S. 58, § 2. 1892, 195, § 2. 1894, 491, §§ 10, 11, 13. 1899, 408, § 20.

Inspection of Veal.

SECTION 71 (*as amended by 1908, 411, § 2*). The board of health, by themselves, their officers or agents, may inspect all veal found, offered or exposed for sale or kept with the intent to sell in its city or town and if, in its opinion, said veal is that of a calf less than four weeks old when killed, the board shall seize and destroy or dispose of it as provided in the preceding section, subject, however, to the provisions thereof relative to the disposal of money.

1866, 253, § 1. 1872, 231, § 3. 1875, 29, § 3. 1876, 180, § 3. P. S. 58, § 3; 208, § 2. 1894, 491, § 12. 1899, 408, § 20.

Penalty for obstructing Inspector.

SECTION 72 (*as amended by 1908, 411, § 3*). Whoever prevents, obstructs or interferes with the board of health, its officers or agents, in the performance of its duties as provided herein, or hinders, obstructs or interferes with any inspection or examination by it or them, or whoever secretes or removes any carcass, meat, fish, vegetables, fruit or provisions of any kind, for the purpose of preventing the same from being inspected or examined under the provisions of sections seventy to seventy-six, inclusive, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

P. S. 58, § 2. 1894, 491, § 13.

Sale of Unwholesome Food.

SECTION 73 (*as amended by 1907, 293*). The provisions of section seventy-three of chapter fifty-six of the Revised Laws shall not apply to persons, firms, or corporations engaged in the wholesale fruit and vegetable business, who, at the time of sale of fruit or vegetables in the original package, make known to the

purchaser the partly decayed condition of the articles in said package.

1784, 50. R. S. 131, § 1. G. S. 166, § 1. 1872, 231, § 5. 1875, 29, § 5. 1876, 180, § 5. P. S. 58, § 5; 208, § 1. 1894, 491, § 15.

Hemmenway *v.* Wood, 1 Pick. 524.
Peckham *v.* Holman, 11 Pick. 484.

Penalties for Sale of Unwholesome Meal.

SECTION 74. Whoever kills or causes to be killed or knowingly sells, offers or exposes for sale or has in his possession with intent to sell for food the veal of a calf killed when less than four weeks old shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

1885, 239. G. S. 106, § 2. 1866, 253, § 1. 1872, 231, § 5. 1875, 29, § 5. 1876, 180, § 5. P. S. 208, § 2. 1894, 491, § 15.

Commonwealth *v.* Raymond, 97 Mass. 567 (see page 147).

Board of Health may cause Publication of Certain Facts.

SECTION 75. The board of health for the city or town in which any animal or property has been condemned under the provisions of sections seventy and seventy-one may cause a description of the place in which such condemned property was found, the name of every person in whose possession it was found and the name of every person convicted of an offence under the provisions of the two preceding sections to be published in two newspapers published in the county in which such property was found.

1872, 231, § 6. 1875, 29, § 6. 1876, 180, § 6. P. S. 58, § 6. 1894, 491, § 16.

Sale of Poultry regulated.

SECTION 76. Whoever knowingly sells or exposes for sale poultry, unless it is alive, before it has been properly dressed by the removal of the crop and entrails if they contain food, shall be punished by a fine of not less than five nor more than fifty dollars for each offence. Boards of health shall cause the provisions of this section to be enforced in their respective cities and towns.

1883, 230. 1887, 94.

Acts of 1913, Chapter 687.

Sale of Unwholesome Food.

Penalty for Sale of Unwholesome Food.

Section 1. Whoever sells or offers for sale for food or drink any diseased animal or any product thereof or any tainted, diseased, corrupt, decayed or unwholesome carcass, meat, fish, vegetables, produce, fruit or provisions of any kind, except when packed in such a container that, upon reasonable inspection, the condition of the contents thereof cannot be ascertained, without making the condition of the thing sold or offered for sale fully known to the buyer shall be punished by a fine of not more than two hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Revised Laws, Chapter 75, Section 105, as amended by Acts of 1902, Chapter 312, Section 2; Acts of 1903, Chapter 220, Section 2; Acts of 1908, Chapter 329, Section 6; Acts of 1909, Chapter 474; and Acts of 1912, Chapter 248, Section 2.

Slaughter Houses.

Private Slaughter Houses.

Section 105. The provisions of the six preceding sections shall not apply to a person not engaged in such business who, upon his own premises and not in a slaughter house, slaughters his own neat cattle, sheep or swine, but the carcass of any such animals shall be inspected, and, unless condemned, shall be stamped or branded according to the provisions of section one hundred and three of chapter seventy-five of the Revised Laws, as set forth in chapter two hundred and twenty of the acts of the year nineteen hundred and three, and as amended by chapter four hundred and seventy-one of the acts of the year nineteen hundred and nine and by section five of chapter two hundred and ninety-seven of the acts of the year nineteen hundred and eleven, by an inspector at the time of slaughter.

(Note. — The "six preceding sections" referred to are sections 99 to 104, inclusive, of Revised Laws, chapter 75. These sections provide for the licensing of slaughter houses.)

6. APPLE GRADING.

GENERAL ACTS, 1915, CHAPTER 261.

PACKING, GRADING AND SALE OF APPLES.[1]

Standard Barrel and Standard Box defined.

SECTION 1. The standard barrel for apples shall be of the following dimensions when measured without distention of its parts: — length of stave, twenty-eight and one half inches; diameter of heads, seventeen and one eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four tenths of an inch: *provided*, that any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel.

The standard box for apples shall be of the following dimensions by inside measurement: eighteen inches by eleven and one half inches by ten and one half inches, without distention of its parts, and having a capacity of not less than two thousand one hundred seventy-three and one half cubic inches.

Grades defined.

SECTION 2 (*as amended by G. A., 1916, 63, § 1*). The standard grades of apples when packed or repacked in closed packages within this commonwealth shall be as follows: — "Massachusetts Standard Fancy" shall include only apples of one variety which are well matured specimens, hand-picked, above medium color for the variety, normal shape, of good and reasonably uniform size, sound, free from disease, insect and fungus injury, bruises and any other defects except such as are necessarily caused in the operation of packing, and shall be packed properly in clean, strong packages: *provided*, that apples of one variety which are not more than three per cent below the foregoing specifications may be graded as "Massachusetts Standard Fancy."

"Massachusetts Standard A" shall include only apples of one variety which are well matured specimens, properly packed, of medium color for the variety, normal shape, sound, practically free from disease, insect and fungus injury, bruises and other defects except such as are necessarily caused in the operation of

[1] For regulations adopted by the secretary of the Board of Agriculture for the enforcement of this law, and also for the United States standard barrel law and United States apple-grading law, see Circular No. 50, "Apple Grading and Packing," published by the Massachusetts State Board of Agriculture.

packing: *provided*, that apples of one variety which are not more than five per cent below the foregoing specifications may be graded as "Massachusetts Standard A."

"Massachusetts Standard B" shall include only apples of one variety, which are well matured, properly packed, practically normal shape, practically free from disease, insect and fungus injury or any other defect that materially injures the appearance or useful quality of the apples, and which may be less than medium color for the variety: *provided*, that apples of one variety which are not more than ten per cent below the foregoing specifications may be graded as "Massachusetts Standard B."

"Ungraded." Apples not conforming to the foregoing specifications of grade, or, if conforming, not branded in accordance therewith, shall be classed as ungraded and so branded.

Use of Other Marks permitted.

SECTION 3 (*as amended by G. A., 1916, 63, § 2*). The marks indicating the grade, as above prescribed, may be accompanied by any other designation of grade or brand if such designation is not inconsistent with, or marked more conspicuously on the package than, the mark or marks required by section five of this act.

Minimum Size to be marked on Package.

SECTION 4. The minimum size of the fruit in all grades, including the ungraded, shall be marked upon the package, and shall be determined by taking the transverse diameter of the smallest fruit in the package at right angles to the stem and blossom end. Minimum sizes shall be stated in variations of one quarter of an inch, such as two inches, two and one quarter inches, two and one half inches, two and three quarters inches, three inches, three and one quarter inches, and so forth, in accordance with the facts. Minimum sizes may be designated by figures instead of words. The word "minimum" may be designated by using the abbreviation "min."

Closed Packages to be Branded.

SECTION 5. Every closed package of apples packed or repacked in the commonwealth and intended for sale, either within or without the commonwealth, shall have marked in a conspicuous place on the outside of the package in plain letters a state-

ment of the quantity of the contents, the name and address of the packer or of the person by whose authority the apples were packed, the true name of the variety and the grade and the minimum size of the apples contained therein, in accordance with the provisions of sections two, three and four of this act, and the name of the state in which they were grown. If the true name of the variety is not known to the packer or other person by whose authority the apples are packed, the statement shall include the words "variety unknown", and if the name of the state in which the apples were grown is not known, this fact shall also be set forth in the statement. If apples are repacked, the package shall be marked "repacked", and shall bear the name and address of the repacker, or the name and address of the person by whose authority it is repacked, in place of that of the original packer.

Style and Size of Letters and Figures fixed.

SECTION 6. The branding or marking of barrels under the provisions of this act shall be in block letters and figures of a size not less than thirty-six point Gothic. The secretary of the state board of agriculture shall prescribe rules and regulations as to the lettering to be used in branding or marking other closed packages.

Packing, Sale or Distribution of Adulterated or Misbranded Apples prohibited.

SECTION 7. It shall be unlawful for any person to pack, sell, distribute or offer or expose for sale or distribution, apples which are adulterated or misbranded within the meaning of this act.

"Adulterated" defined.

SECTION 8 (*as amended by G. A., 1916, 63, § 3*). For the purposes of this act, apples packed in a closed package shall be deemed to be adulterated if their measure, quality or grade does not conform in every particular to the brand or mark upon or affixed to the package, or if the faced or shown surface gives a false representation of the contents of the package.

"Misbranded" defined.

SECTION 9. For the purposes of this act, apples packed in a closed package shall be deemed to be misbranded: —

First. If the package is packed or repacked in the common-

wealth and fails to bear all statements required by sections two, three, four and five and in accordance with the provisions of section six of this act.

Second. If the package, whether packed or repacked within or without the commonwealth is falsely branded, or bears any statement, design or device, regarding the apples contained therein, which is false or misleading, or if the package bears any statement, design or device indicating that the apples contained therein are of a specified Massachusetts standard grade, and said apples, when packed or repacked, do not conform to the requirements prescribed by this act for such grade.

Cold-storage Apples to be inspected.

SECTION 10 (*as amended by G. A., 1916, 63, § 4*). Apples which have been in cold storage shall not be sold or distributed, or offered or exposed for sale or distribution, in closed packages until they have been inspected in accordance with rules and regulations to be prescribed by the secretary of the state board of agriculture.

Rules and Regulations to be made.

SECTION 11. The secretary of the state board of agriculture shall make rules and regulations for carrying out the provisions of this act, and he shall publish, on or before the first day of September following the passage of this act, and after a public hearing, rules for the grading and packing of apples and specifying, for each variety of apples, the minimum size which shall be included in the grade designated as "fancy"; and he may thereafter modify such rules and regulations.

Inspectors authorized to enter Places and open Packages.

SECTION 12. The secretary of the state board of agriculture, in person or by deputy, shall have free access at all reasonable hours to any building or other place where apples are packed, stored, sold, or offered or exposed for sale. He shall also have power in person or by deputy to open any box, barrel, or other container, and may, upon tendering the market price, take samples therefrom.

Appropriation provided.

SECTION 13. For the purpose of carrying out the provisions of this act there may be expended during the present fiscal year a sum not exceeding one thousand dollars, and thereafter such

annual expenses as may be necessary shall be paid from the annual appropriation for disseminating useful information.

Penalty fixed.

SECTION 14. Any person who adulterates or misbrands apples within the meaning of this act, or who packs, repacks, sells, distributes, or offers or exposes for sale or distribution, apples in violation of any provision of this act, or who wilfully alters, effaces or removes, or causes to be altered, effaced or removed, wholly or partly, any brands or marks required to be put upon any closed package under the provisions of this act, shall be punished by a fine not exceeding fifty dollars for the first offence, and by a fine not exceeding one hundred dollars for each subsequent offence.

Certain Persons exempted and Liability placed.

SECTION 15. No person who sells or distributes or offers or exposes for sale or distribution apples adulterated or misbranded within the meaning of this act shall be deemed to have violated any of the provisions of this act, if it shall appear that he acted in good faith solely as a distributor, or if he shall furnish a guaranty signed by the person from whom he received the apples, with the address of such person, that the apples are not adulterated or misbranded within the meaning of this act. In such case, the person from whom the distributor received the apples shall be liable for the acts of the distributor who relied upon his guaranty, to the same extent as the distributor would have been liable under the provisions of this act.

"Person" and "Closed Package" defined.

SECTION 16. The word "person", as used in this act shall include persons, firms, corporations, societies and associations, and the acts of agents and employees shall be construed to be the acts of their principals and employers as well as of the agents and employees. The words "closed package" shall mean a barrel, box or other container the contents of which cannot be sufficiently seen for purposes of inspection without opening the container.

The act took effect upon its passage, except that the provisions of sections one, two, three, four, five, six, seven, eight, nine, ten, fourteen, fifteen and sixteen were not operative until the first day of July, in the year nineteen hundred and sixteen.

VI. MISCELLANEOUS STATUTES RELATING TO AGRICULTURE.

1. FENCE VIEWERS AND FIELD DRIVERS.

REVISED LAWS, CHAPTER 33.

FENCE VIEWERS.

Fences defined.

SECTION 1. Fences four feet high, in good repair, constructed of rails, timber, boards, iron or stone, and brooks, rivers, ponds, creeks, ditches and hedges, or other things which the fence viewers consider equivalent thereto, shall be deemed legal and sufficient fences.

C. L. 145, § 2. 1785, 52, § 2. G. S. 25, § 1.
1693–4, 7, § 1. R. S. 19, § 1. P. S. 36, § 1.

Eames *v.* Salem & Lowell R.R. Co., 98 Mass. 560 (see page 151).

Adjoining Occupants to maintain Fences.

SECTION 2. The occupants of adjoining lands which are enclosed with fences shall, so long as both of them improve the same, maintain partition fences in equal shares between their enclosures, unless they otherwise agree.

1698, 12, §§ 2, 4. 1785, 52, §§ 2, 3. G. S. 25, §§ 2, 8.
1742–3, 33. R. S. 19, §§ 2, 8. P. S. 36, §§ 2, 8.

Newell *v.* Hill, 2 Met. 180 (see page 151).
Thayer *v.* Arnold, 4 Met. 589 (see page 151).
Holbrook *v.* McBride, 4 Gray, 220.
Kennedy *v.* Owen, 134 Mass. 226 (see page 153).
Fay *v.* Elliott, 154 Mass. 588 (see page 148).

Proceedings on Neglect of Party.

SECTION 3. If a person refuses or neglects to build, repair or rebuild a partition fence which he is required to maintain, any person aggrieved may complain to two or more of the fence viewers, who after notice to each party shall view the same, and if they determine that it is insufficient and that a partition fence is required between the lands of the respective occupants, they shall so state in writing to the delinquent occupant, and direct him to repair or build the same within a reasonable time, not exceeding fifteen days, and if the fence is not built, repaired or rebuilt accordingly, the complainant may build or repair it.

134 Mass. 229. 1785, 52, § 2. 1863, 190, § 1.
C. L. 17, § 2. R. S. 19, § 3. 1870, 376.
1693–4, 7, § 1. G. S. 25, § 3. P. S. 36, § 3.
1742–3, 33.

Scott *v.* Dickinson, 14 Pick. 276 (see page 154).
Lamb *v.* Hicks, 11 Met. 496 (see page 152).
Sears *v.* Inhab. of Charlemont, 6 Allen, 437 (see page 152).

Remedy against Adjoining Owner for Repair of Fence.

SECTION 4. If a deficient fence which has been built up or repaired by a complainant is, after due notice to each party, adjudged sufficient by two or more of the fence viewers, and the value thereof with their fees has been ascertained by a certificate under their hands, the complainant may demand, either of the occupant or owner of the land where the fence was deficient, double the amount so ascertained; and upon the neglect or refusal to pay the same for one month after demand, he may recover the same with interest at one per cent a month in an action of contract.

1785, 52, § 3. R. S. 19, § 4. G. S. 25, § 4. P. S. 36, § 4.

Rust *v.* Low & Stanwood, 6 Mass. 90 (see page 148).
Binney *v.* Hull, 5 Pick. 503 (see page 150).
Scott *v.* Dickinson, 14 Pick. 276 (see page 154).
Lamb *v.* Hicks, 11 Met. 496 (see page 152).
Sears *v.* Inhab. of Charlemont, 6 Allen, 437 (see page 152).
Kennedy *v.* Owen, 131 Mass. 431 (see page 153).
Kennedy *v.* Owen, 134 Mass. 226 (see page 153).
Day *v.* Dolan, 174 Mass. 524.

Controversies as to Repairs, etc.

SECTION 5. If the rights of the respective occupants in partition fences and their obligation to maintain the same are in controversy, either party may apply to two or more of the fence viewers, who, after due notice to each party and a hearing, may in writing assign to each his share thereof, and may direct the time within which each party shall erect or repair his share; which assignment, being recorded in the office of the city or town clerk, shall be binding upon the parties and upon the succeeding occupants of the lands.

1742–3, 33. R. S. 19, § 5. P. S. 36, § 5.
1785, 52, § 3. G. S. 25, § 5.

Lamb *v.* Hicks, 11 Met. 496 (see page 152).
Alger *v.* Pool, 11 Cush. 450 (see page 153).

Double Damages, when.

SECTION 6. If a person refuses or neglects to erect and maintain the part of a fence assigned to him by the fence viewers, it may be erected and maintained by any person aggrieved, who shall be entitled to double the value thereof, which shall be ascertained and recovered in the manner aforesaid.

1693–4, 7, § 1. 1785, 52, § 3. G. S. 25, § 6.
1742–3, 33. R. S. 19, § 6. P. S. 36, § 6.

Compensation for repairing more than Just Share.

SECTION 7. If a partition fence is required between the lands of adjoining occupants, and either of them has, before complaint made, voluntarily erected the whole fence, or more than his just share thereof, or has otherwise become proprietor thereof, the fence viewers may order the other occupant to pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.

R. S. 19, § 7. 1863, 190, § 1. P. S. 36, § 7.
G. S. 25, § 7. 1870, 376.

Scott *v.* Dickinson, 14 Pick. 276 (see page 154).
Lamb *v.* Hicks, 11 Met. 496 (see page 152).

Fences, how and where made, when Lands are bounded by Water.

SECTION 8. If lands of different persons, which are required to be fenced, are divided by a river, brook, pond or creek, and one of the occupants refuses or neglects to join in making a partition fence or they disagree respecting the same, two or more of the fence viewers shall, upon application, forthwith view such river, brook, pond or creek; and if they determine that it is not sufficient as a fence, that it is impracticable to fence on the true boundary line without unreasonable expense and that a partition fence is required, they shall, after notice to the parties, determine how or on which side the fence shall be set up and maintained, or whether partly on the one side and partly on the other, as to them shall appear just, and shall reduce their determination to writing; and if either party refuses or neglects to make and maintain his part of the fence according to such determination, it may be made and maintained as before provided, and the delinquent party shall be subject to the same cost and charges, and they shall be recovered in like manner.

1740–1, 19, § 1. 1760–1, 21. 1779–80, 18. G. S. 25, § 9.
1745–6, 17. 1770–1, 5. 1785, 52, § 4. P. S. 36, § 9.
1752–3, 17. 1775–6, 14. R. S. 19, § 9.

Lamb *v.* Hicks, 11 Met. 496 (see page 152).

Improved Land in Common, without Partition Fences, may be divided.

SECTION 9. If land belonging to two persons in severalty has been occupied in common without a partition fence between them, and one of the occupants desires to occupy his part in severalty and the other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party

desiring it may have the same divided and assigned by two or more of the fence viewers in the manner provided in this chapter; and the fence viewers may in writing assign a reasonable time, having regard to the season, for making the fence; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of such occupant, and recover therefor double the expense thereof, with the fees of the fence viewers, in the manner aforesaid.

1785, 52, § 5. G. S. 25, § 10. 1870, 376.
R. S. 19, § 10. 1863, 190. P. S. 36, § 10.

Kennedy *v.* Owen, 131 Mass. 431 (see page 153).
Fay *v.* Elliott, 154 Mass. 588 (see page 148).

Maintenances of Fences. Land, how laid Common.

SECTION 10. If a division of fence between the owners of improved land has been made either by fence viewers or under an agreement in writing between the parties which has been recorded in the office of the clerk of the city or town, the several owners of such land and their heirs and assigns shall erect and maintain said fences agreeably to such division; but if a person lays his land common and determines not to improve any part of the same adjoining the fence so divided, and gives six months' notice of his determination to all the occupants of adjoining land, he shall not be required to keep up or maintain said fence during the time that his land lies common and unimproved.

1822, 60. R. S. 19, § 15. G. S. 25, § 11. P. S. 36, § 11.

Field *v.* Nantucket, 1 Cush. 11 (see page 150).
Kennedy *v.* Owen, 134 Mass. 226 (see page 153).

Purchase of Right in Fence.

SECTION 11. If one person ceases to improve his land or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure, if the owner or occupant thereof pays the reasonable value thereof, as determined in writing by two or more of the fence viewers.

C. L. 19, § 7. 1742–3, 33. R. S. 19, § 11. P. S. 36, § 12.
1698, 12, § 4. 1785, 52, § 6. G. S. 25, § 12.

If Unimproved Land Enclosed, etc., Person Benefited shall pay, etc.

SECTION 12. If unenclosed land is afterward enclosed or used for depasturing, the occupant or owner thereof shall pay for one-half of each partition fence standing upon the line between it and the enclosed land of any other occupant or owner, the

value thereof, as determined in writing by two or more of the fence viewers; and if thereupon such occupant or owner neglects or refuses, for thirty days after demand, to pay one-half of the value, the proprietor thereof may maintain an action of contract therefor and for the costs of ascertaining the same; but the occupant or owner of unenclosed land on the island of Nantucket which is used only for depasturing shall not be subject to the provisions of this section.

C. L. 19, § 7. 1742–3, 33. R. S. 19, § 12. G. S. 25, § 13.
1698, 12, § 4. 1785, 52, § 6. 1847, 102. P. S. 36, § 13.

Field *v.* Nantucket, 1 Cush. 11 (see page 150).
Fay *v.* Elliott, 154 Mass. 588 (see page 148).

Fence Viewers may establish Division Lines, when.

SECTION 13. Fence viewers may determine whether a partition fence is required between the lands of respective occupants. If the division line between their lands is in dispute, or unknown, they may designate a line on which the fence shall be built and may employ a surveyor therefor; and such line shall, for the purpose of maintaining a fence, be deemed the division line between such lands, until it is determined that the true line is in another place, and, until so determined, all provisions of law relative to the erection, maintenance and protection of fences shall be applicable to the fence erected, or to be erected, on such line.

1863, 190, § 1. 1870, 376. P. S. 36, § 14.

Fay *v.* Elliott, 154 Mass. 588 (see page 148).

Removal to and Rebuilding of Fence on True Line.

SECTION 14. If it is determined that the true division line is in another place, each occupant shall remove his part of the fence to, and rebuild the same on such line; and in case of neglect or refusal by either to remove and rebuild his share thereof, the other may apply to two or more of the fence viewers, who shall view the premises and assign a time within which the fence shall be removed and rebuilt, and shall give the delinquent party notice thereof; and if such party does not remove and rebuild the fence within the time so assigned, the other party may remove and rebuild the same and recover double the expense thereof, with the fees of the fence viewers, to be ascertained and recovered in the manner provided in section four.

1863, 190, § 2. P. S. 36, § 15.

Fence Viewers, when Fences are on Town Lines.

SECTION 15. If the line upon which a partition fence is to be made or divided is a boundary line of a city or town or is partly in one and partly in another city or town, a fence viewer shall be taken from each place.

1785, 52, § 6. R. S. 19, § 13. G. S. 25, § 14. P. S. 36, § 16.

Water Fences, how made.

SECTION 16. A water fence, or fence running into the water, shall, unless otherwise agreed by the parties, be built by them in equal shares; and they shall have like remedies as in case of partition fences.

1740–1, 19, § 3. 1785, 52, § 7. R. S. 19, § 14. G. S. 25, § 15. P. S. 36, § 17.

Penalty for Fence Viewer's Neglect of Duty.

SECTION 17. A fence viewer who, when requested, unreasonably neglects to perform any duty required of him in this chapter shall forfeit five dollars, to be recovered by action of tort to the use of the city or town, or on complaint to the use of the commonwealth, and shall also be liable for all damages to the party injured.

1698, 12, § 1. 1753–4, 29, § 1. 1756–7, 24. 1785, 52, § 8. R. S. 19, § 17. G. S. 25, § 16.

Fees of Fence Viewers.

SECTION 18. Each fence viewer shall be paid at the rate of two dollars a day for the time during which he is employed. Such payment shall be made by all or by such of the parties in dispute, and in such proportions, as shall be determined by a certificate in writing under the hands of the fence viewers acting in each case. If any person or persons, who are so required to pay the whole or any portion of said fees, neglect to pay the fence viewers within thirty days after the certificate had been delivered, the fence viewers may recover, in an action of tort, double the amount of the fees due from such delinquent person.

1698, 12, § 1. 1753–4, 29, § 1. 1756–7, 24. 1785, 52, § 8. R. S. 19, § 18. G. S. 25, § 17. 1862, 93. P. S. 36, § 19.

Lamb *v.* Hicks, 11 Met. 496 (see page 152).

Fence a Nuisance, when.

SECTION 19. A fence or other structure in the nature of a fence which unnecessarily exceeds six feet in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance. Any such owner or occupant who is injured either in the comfort or enjoyment of his estate thereby may have an action of tort for damages according to the provisions of chapter one hundred and eighty-six.

1887, 348.

Rideout *v.* Knox, 148 Mass. 368.
Rice *v.* Moorhouse, 150 Mass. 482.
Spaulding *v.* Smith, 162 Mass. 543 (see page 154).
Smith *v.* Morse, 148 Mass. 407.

POUNDS AND IMPOUNDING OF CATTLE. FIELD DRIVERS.

Pounds to be maintained.

SECTION 20. Each city and town shall maintain sufficient pounds, and for neglect thereof for three months shall forfeit fifty dollars; and shall annually appoint a keeper of each pound therein.

C. L. 124.
1698, 6, § 1.
1728–9, 5.
1788, 65, § 1.
1834, 184, §§ 1, 4.
R. S. 19, §§ 19–21.
1848, 272.
G. S. 25, §§ 18, 20.
P. S. 36, §§ 20, 22.

Anthony *v.* Anthony, 6 Allen, 408 (see page 162).

Penalty for injuring.

SECTION 21. Whoever wilfully injures a city or town pound shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than ninety days.

1834, 184, § 8. R. S. 19, § 24. G. S. 25, § 19. P. S. 36, § 21.

Beasts at Large without Keeper to be taken up.

SECTION 22. Every field driver shall take up horses, asses, mules, neat cattle, sheep, goats or swine, going at large in the highways or townways, or on common and unimproved land, within his city or town, and not under the care of a keeper; and for any such cattle or beasts so going at large on the Lord's day, the field driver or any other inhabitant of the city or town may, in an action of tort, recover for each beast the same fees

which the field driver is entitled to receive for distraining like beasts.

1698, 6, § 2. 1788, 44, § 2; 65, § 2. 1798, 19. 1834, 184, § 4. R. S. 19, § 22. G. S. 25, § 21. P. S. 36, § 23.

Bruce *v.* Holden, 21 Pick. 187 (see page 157).
Wild *v.* Skinner, 23 Pick. 251 (see page 156).
Pickard *v.* Howe, 12 Met. 198 (see page 158).
Coffin *v.* Vincent, 12 Cush. 98 (see page 156).
Crippen *v.* Byron, 4 Gray, 314.
Dean *v.* Lindsey, 16 Gray, 264 (see page 155).
Parker *v.* Jones, 1 Allen, 270 (see page 155).
Cleverly *v.* Towle, 3 Allen, 39 (see page 157).
Anthony *v.* Anthony, 6 Allen, 408 (see page 162).
Leonard *v.* Doherty, 174 Mass. 570.
Sanderson *v.* Lawrence, 2 Gray, 178 (see page 157).
Bruce *v.* White, 4 Gray, 345 (see page 161).

Beasts at Large without Keeper to be impounded.

SECTION 23. Beasts so taken up and distrained by a field driver shall be forthwith impounded in the city or town pound, and the keeper shall furnish them while there with suitable food and water.

1788, 65, § 2. 1834, 184, § 4. R. S. 113, § 1. G. S. 25, § 22. P. S. 36, § 24.

Folger *v.* Hinckley, 5 Cush. 263 (see page 160).
Byron *v.* Crippen, 4 Gray, 312.
Phillips *v.* Bristol, 131 Mass. 426 (see page 155).

Fees of Field Driver and Pound Keeper.

SECTION 24. The field driver shall be entitled to ten cents each for sheep and goats, and fifty cents each for other beasts, so taken up by him, and the pound keeper shall be entitled to four cents each for the animals so impounded; but if more than ten sheep are taken up at the same time, the fees for all above that number shall be only five cents each.

1788, 65, § 2. 1834, 184, § 4. R. S. 113, § 2. G. S. 25, § 23. 1863, 178. P. S. 36, § 25.

Phillips *v.* Bristol, 131 Mass. 426 (see page 155).

Fees of Field Driver and Pound Keeper to be paid by Owner of Beasts.

SECTION 25. The pound keeper shall not deliver to the owner any beasts so impounded until the owner pays him his fees, the expense of keeping the beasts, and the fees of the field driver which, when received, he shall pay to the field driver.

1834, 184, § 4. R. S. 113, § 3. G. S. 25, § 24. P. S. 36, § 26.

Folger *v.* Hinckley, 5 Cush. 263 (see page 160).

Distraint of Beasts doing Damage.

SECTION 26. If a person is injured in his land by horses, asses, mules, neat cattle, sheep, goats or swine, he may recover his damages by an action against the owner of the beasts, or by distraining the beasts doing the damage and proceeding therewith as hereinafter directed; but if the beasts were lawfully on the adjoining lands and escape therefrom through the neglect of the person injured to maintain his part of the division fence the owner shall not be liable nor the beasts distrained.

1753–4, 29, § 3. 1756–7, 24. 1788, 65, § 3. 1834, 184, § 5. R. S. 113, § 4. G. S. 25, § 25. P. S. 36, § 27.

Little *v.* Lothrop, 5 Greenl. 356 (see page 149).
Stackpole *v.* Healy, 16 Mass. 33 (see page 149).
Rust *v.* Low & Stanwood, 6 Mass. 90 (see page 148).
Sherman *v.* Braman, 13 Met. 407 (see page 158).
Smith *v.* Gates, 21 Pick. 55 (see page 162).
Coffin *v.* Vincent, 12 Cush. 98 (see page 156).
Merrick *v.* Work, 10 Allen, 544 (see page 160).
Hartford *v.* Brady, 114 Mass. 466 (see page 151).
Newhouse *v.* Hatch, 126 Mass. 364 (see page 159).
Phillips *v.* Bristol, 131 Mass. 426 (see page 155).
Conners *v.* Loker, 134 Mass. 510 (see page 161).

Impounding.

SECTION 27. The beasts so distrained shall be impounded in the city or town pound, or in some suitable place, under the immediate care and inspection of the distrainor; and he shall furnish them with suitable food and water while they remain impounded.

C. L. 18, § 3; 20; 145, § 2. 1698, 6, § 3. 1788, 65, § 3. 1834, 184, § 5. R. S. 113, § 5. G. S. 25, § 26. P. S. 36, § 28.

Sherman *v.* Braman, 13 Met. 407 (see page 158).
Newhouse *v.* Hatch, 126 Mass. 364 (see page 159).

Impounding of Beasts on Premises of Field Driver.

SECTION 28. If beasts are taken up and distrained by a field driver in a town which adopts the provisions of this section or has adopted the corresponding provisions of earlier laws, he may impound them on his own premises; and for the purposes of this chapter he shall be considered a pound keeper, and such place on his premises shall be considered a town pound relative to beasts therein impounded.

1869, 366. P. S. 36, § 29.

Person distraining to state Demand.

SECTION 29. If the beasts are impounded in the city or town pound, the distrainor shall leave with the pound keeper a memorandum in writing under his hand, stating the cause of

impounding and the amount which he demands from the owner for the damage done by them, and also for the daily charges of feeding them; and if they are impounded in any other place, he shall on demand give a like memorandum to the owner.

1788, 65, § 4. R. S. 113, § 6. P. S. 36, § 30.
1834, 184, § 5. G. S. 25, § 27.

Bruce *v.* Holden, 21 Pick. 187 (see page 157).
Wild *v.* Skinner, 23 Pick. 251 (see page 156).
Pickard *v.* Howe, 12 Met. 198 (see page 158).
Sherman *v.* Braman, 13 Met. 407 (see page 158).
Merrick *v.* Work, 10 Allen, 544 (see page 160).
Newhouse *v.* Hatch, 126 Mass. 364 (see page 159).

Beasts not delivered until Costs paid.

SECTION 30. The pound keeper shall not deliver the beasts to the owner until his fees, the amount so demanded by the distrainor for the damages and charges aforesaid, the expense, if any, of advertising and all other legal costs and expenses have been paid to him.

1834, 184, § 5. R. S. 113, § 7. G. S. 25, § 28. P. S. 36, § 31.

Folger *v.* Hinckley, 5 Cush. 263 (see page 160).

Notice to be given Owner or Keeper.

SECTION 31. Whoever impounds beasts shall, within twenty-four hours thereafter, give notice in writing, containing a description of the beasts and a statement of the time, place and cause of impounding, to the owner or person having the care of them, if known and living within six miles of the place of impounding, by delivering it to him or leaving it at his place of abode.

C. L. 18, § 3; 125, 146, § 3. 1788, 65, § 4. R. S. 113, § 8. P. S. 36, § 32.
1698, 6, § 3. 1834, 184, § 6. G. S. 25, § 29.

Bruce *v.* Holden, 21 Pick. 187 (see page 157).
Wild *v.* Skinner, 23 Pick. 251 (see page 156).
Pickard *v.* Howe, 12 Met. 198 (see page 158).
Coffin *v.* Field, 7 Cush. 355.
Sanderson *v.* Lawrence, 2 Gray, 178 (see page 157).
Cleverly *v.* Towle, 3 Allen, 39 (see page 157).
Merrick *v.* Work, 10 Allen, 544 (see page 160).
Phillips *v.* Bristol, 131 Mass. 426 (see page 155).
Field *v.* Jacobs, 12 Met. 118 (see page 159).

Notice to be posted and published.

SECTION 32. If there is no person entitled to such notice, the person impounding the beasts shall, within forty-eight hours thereafter, post a like notice in a public place in the city or town and in a public place in each of any two adjoining cities or towns, if within four miles from the place where the beasts were

taken; and if their value exceeds thirty dollars and no person claims them within seven days after the day of impounding, a like notice shall be published three weeks successively in a newspaper, if any, published within twenty miles of the pound, the first publication to be within fifteen days after the day of impounding.

1834, 184, § 6. R. S. 113, § 9. G. S. 25, § 30. P. S. 36, § 33.

Pickard *v.* Howe, 12 Met. 198 (see page 158).
Cleverly *v.* Towle, 3 Allen, 39 (see page 157).

Amount due from Owner or Keeper, how determined.

SECTION 33. If the owner or keeper of the beasts is dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable determined by two disinterested persons, who shall be appointed and sworn by a justice of the peace or by the city or town clerk.

C. L. 18, § 3. 1834, 184, § 6. G. S. 25, § 31.
1788, 65, § 4. R. S. 113, § 10. P. S. 36, § 34.

SECTION 34. If the amount for which the beasts have been impounded and detained is not paid within fourteen days after notice of the impounding has been given as before directed, or after the last publication of such notice, the person who impounded them shall apply to a justice of the peace, or to the city or town clerk who shall issue a warrant to two disinterested persons who shall be appointed and sworn by the justice or clerk, and they shall determine the amount due from the owner or keeper of the beasts for the damages, costs and expenses for which they have been impounded and detained, including a reasonable compensation for their own services.

1703–4, 10. 1834, 184, § 6. G. S. 25, § 32.
1788, 65, § 4. R. S. 113, § 11. P. S. 36, § 35.

Smith *v.* Gates, 21 Pick. 55 (see page 162).

If not paid, Beasts to be sold.

SECTION 35. If the amount so determined is not forthwith paid, the person who impounded the beasts shall cause them to be sold by auction in the city or town where they are impounded, first advertising the sale by posting up a notice thereof for twenty-four hours at some public place in such city or town.

C. L. 146, § 3. 1788, 65, § 4. R. S. 113, § 12. P. S. 36, § 36.
1703–4, 10. 1834, 184, § 6. G. S. 25, § 33.

Disposition of Proceeds.

SECTION 36. The proceeds of such sale, after paying all said damages, costs, expenses and charges for advertising and selling the beasts, shall be deposited in the city or town treasury for the use of the owner, upon proof of his right thereto within two years from the sale.

C. L. 146, § 3. 1703–4, 10. 1757–8, 10. 1760–1, 21. 1770–1, 5. 1775–6, 14. 1779–80, 18. 1788, 65, § 37. 1834, 184, § 6. R. S. 113, § 13. G. S. 25, § 34. P. S. 36, § 37.

Escaped or Rescued Beasts may be retaken.

SECTION 37. If beasts which have been lawfully distrained or impounded escape or are rescued, the pound keeper, field driver or other person who distrained them may, at any time within seven days thereafter, retake, hold and dispose of them as if there had been no escape or rescue.

1834, 184, § 7. R. S. 113, § 14. G. S. 25, § 35. P. S. 36, § 38.

Penalty for rescuing Beasts distrained.

SECTION 38. Whoever rescues beasts lawfully distrained or impounded shall be liable in an action of tort to any person injured for all damages sustained thereby and the fees and charges incurred before the rescue; and he shall also forfeit not less than five nor more than twenty dollars.

C. L. 125, § 2. 1698, 6, § 4. 1788, 65, § 6. 1834, 184, § 8. 1 Mass. 168. 4 Mass. 471. R. S. 113, § 15. G. S. 25, § 36. P. S. 36, § 39.

Vinton *v.* Vinton, 17 Mass. 342.
Commonwealth *v.* Beale, 5 Pick. 514 (see page 161).
Field *v.* Coleman, 5 Cush. 267.

Legality of Distress, how tried.

SECTION 39. The defendant in an action for rescuing beasts distrained or impounded shall not be allowed to allege or give in evidence the insufficiency of the fences or any other fact or circumstance to show that the distress or impounding was illegal; but if there is such ground of objections to the proceedings he may avail himself thereof in an action of replevin.

1788, 65, § 6. R. S. 113, § 16. G. S. 25, § 37. P. S. 36, § 40.

Melody *v.* Reab, 4 Mass. 471.
Commonwealth *v.* Beale, 5 Pick. 514 (see page 161).

Rams and He-goats, when not to go at Large.

SECTION 40. If the owner of a ram or he-goat suffers it to go at large out of his enclosure between the first day of July and the twenty-fifth day of December, he shall, if prosecuted within thirty days next after such ram or he-goat is found going at large, forfeit five dollars for each offence.

1824, 98, § 1. R. S. 19, § 23. G. S. 25, § 38. P. S. 36, § 41.

2. TRESPASS LAWS.

REVISED LAWS, CHAPTER 208.

Pulling down Stone Walls.

SECTION 91. Whoever wilfully and without right pulls down or removes any portion of a stone wall or fence which is erected or maintained for the purpose of enclosing land shall be punished by a fine of not more than ten dollars.

1901, 298.

ACTS OF 1911, CHAPTER 173.

Powers of Commissioners on Fisheries and Game.

The commissioners on fisheries and game and their duly authorized deputies may arrest without a warrant any person found in the act of wilfully pulling down a stone wall or fence, or otherwise violating the provisions of section ninety-one of chapter two hundred and eight of the Revised Laws.

REVISED LAWS, CHAPTER 208.

Malicious Killing or Poisoning of Cattle.

SECTION 98. Whoever wilfully and maliciously kills, maims or disfigures any horse, cattle or other beast of another person, or wilfully and maliciously administers or exposes poison with intent that it shall be taken or swallowed by any such beast, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

1804, 131, § 4. R. S. 126, § 39. G. S. 161, § 80. P. S. 203, § 93.

Commonwealth *v.* Leach, 1 Mass. 59.
Commonwealth *v.* Walden, 3 Cush. 558.
Commonwealth *v.* Brooks, 9 Gray, 299.
Commonwealth *v.* Towle, 9 Gray, 304.
Commonwealth *v.* McLaughlin, 105 Mass. 460.

Cutting Timber, Wood, Grain, etc.

SECTION 99 (*as amended by 1904, 444, § 1*). Whoever wilfully cuts down or destroys timber or wood standing or growing on the land of another, or carries away any kind of timber or wood cut down or lying on such land, or digs up or carries away stone, ore, gravel, clay, sand, turf or mould from such land, or roots, nuts, berries, grapes or fruit of any kind or any plant there being, or cuts down or carries away sedge, grass, hay or any kind of corn, standing, growing or being on such land, or cuts or takes therefrom any ferns, flowers or shrubs, or carries away from a wharf or landing place any goods in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars, and if the offence is committed on the Lord's day or in disguise or secretly in the night time the imprisonment shall not be less than five days nor the fine less than five dollars.

1698, 7, §§ 1, 2.
1723–4, 10, §§ 1, 2.
1726–7, 3, §§ 1, 2.
1727, 8.
1785, 28, § 1.
1818, 3, §§ 2, 4.
R. S. 126, §§ 44, 45.
G. S. 161, §§ 81, 84.
1868, 321.
P. S. 203, §§ 94, 97.

Moyle *v.* Drake, 141 Mass. 241.

Penalty for Wilful Injuries to Trees, Fences, etc.

SECTION 100 (*as amended by 1902, 544, § 30*). Whoever wilfully and maliciously or wantonly cuts down, destroys or injures a tree which is not his own, standing for any useful purpose, or whoever wilfully and maliciously or wantonly breaks glass in a building which is not his own, or whoever wilfully and maliciously breaks down, injures, mars or defaces a fence belonging to or enclosing land which is not his own, or wilfully and maliciously throws down or opens a gate, bars or fence, and leaves the same down or open, or maliciously and injuriously severs from the freehold of another any produce thereof or anything attached thereto, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

Trespass in Orchard, Garden, etc.

SECTION 105. Whoever wilfully and maliciously enters an orchard, nursery, garden or cranberry meadow, and takes away, mutilates or destroys a tree, shrub or vine or steals, takes and carries away any fruit or flower, without the consent of the owner thereof, shall be punished by a fine of not more than five

hundred dollars or by imprisonment for not more than six months.

C. L. 13, § 1. 1855, 457. 1868, 321.
1698, 7, § 1. G. S. 161, § 83. P. S. 203, § 96.

Commonwealth *v.* Dougherty, 6 Gray, 349.

Trespass by entering Orchard with Intent.

SECTION 106 (*as amended by 1902, 544, § 33*). Whoever wilfully, intentionally and without right enters upon the orchard, garden or other improved land of another, with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars; and if the offence is committed on the Lord's day, or in disguise, or secretly in the night time, the imprisonment shall not be less than five days nor the fine less than five dollars.

1818, 3, §§ 1, 4. G. S. 161, § 84. P. S. 203, § 97.
R. S. 126, § 45. 1868, 321.

Suffering Animals to trespass on Land.

SECTION 107. Whoever, having the charge or custody of sheep, goats, cattle, horses, swine or fowl, wilfully suffers or permits them to enter on, pass over or remain on any orchard, garden, mowing land or other improved or enclosed land of another, after being forbidden in writing or by notice posted thereon by the owner or occupant thereof, or by the authorized agent of such owner or occupant, shall be punished by a fine of not more than ten dollars.

1878, 168. 1879, 70. P. S. 203, § 98.

Defacement of Notice against Trespassers.

SECTION 111. Whoever wilfully tears down, removes or defaces any notice posted on land by the owner, lessee or custodian thereof, warning persons not to trespass thereon, shall be punished by a fine of not more than twenty-five dollars.

1890, 403, § 2.

Arrest without Warrant of Trespasser on Lord's Day.

SECTION 121. Whoever is discovered in the act of wilfully injuring a fruit or forest tree or of committing any kind of malicious mischief on the Lord's day may be arrested without a warrant by a sheriff, deputy sheriff, constable, watchman, police

officer or other person, and detained in jail or otherwise until a complaint can be made against him for the offence, and he be taken upon a warrant issued upon such complaint; but such detention without warrant shall not continue more than twenty-four hours.

1851, 246. 1852, 245. G. S. 161, § 86. P. S. 203, § 104.

ACTS OF 1904, CHAPTER 444.

Extracts from Certain Acts to be printed, etc.

SECTION 2. The secretary of the state board of agriculture shall cause to be printed such extracts from sections ninety-one, ninety-nine, one hundred and five, one hundred and six, one hundred and eleven and one hundred and twenty-one of chapter two hundred and eight of the Revised Laws as in his opinion will tend to prevent depredations of farm and forest lands.

Distribution, Sale, etc., of Posters.

SECTION 3 (*as amended 1914, 239, § 1*). It shall be the duty of the said secretary to cause copies of said extracts to be printed on durable material, suitable to be affixed to trees or otherwise to be posted in the open air, to furnish not exceeding five copies in any one year without charge to any reputable person applying therefor, to sell additional copies at not less than the cost thereof, and annually on or before the first day of April, to send one such copy to each post office in the commonwealth. All amounts received from the sale of said posters shall be paid into the treasury of the commonwealth.

3. REGISTRATION OF STALLIONS.

REVISED LAWS, CHAPTER 102.

Registration of Stallions.

SECTION 167. The owner or keeper of a stallion for breeding purposes shall, before advertising the service thereof, file a certificate of the name, color, age, size and pedigree, as fully as obtainable, of said stallion, and of the name of the person by whom he was bred, with the clerk of the city or town in which said stallion is owned or kept, who shall upon payment of a fee of twenty-five cents, record the same in a book to be kept for that purpose. Whoever neglects to make and file such certificate shall recover no compensation for the services of his stallion, and whoever knowingly and wilfully makes a false certificate shall be punished by a fine of one hundred dollars for each offence.

4. DESTRUCTION OF INSECT PESTS.

Acts of 1914, Chapter 340.

Destruction of Insect Pests on Lands adjacent to Certain Park Lands.

Section 1. The metropolitan park commission is hereby authorized, whenever it shall deem such action advisable, to destroy brown tail moths, gypsy moths and other insect pests on lands near or adjoining lands under the care and control of said commission and to a distance of one thousand feet therefrom: *provided, however,* that said commission shall first have been requested in writing by the owner of any such land to do said work and that such owner shall either have advanced to the commonwealth for the purpose the cost of such work, as estimated by said commission, or, if the commission shall so require, shall have given a bond to the commonwealth to an amount, and with a principal and surety or sureties satisfactory to said commission, to reimburse the commonwealth for the cost of such work.

Action of Contract may be maintained for Expenses incurred.

Section 2. The treasurer and receiver general of the commonwealth may maintain an action of contract in his own name against any owner of land upon which work has been done by said commission as herein authorized, or against the principal and surety or sureties on any bond given as aforesaid, for the expenses incurred by said commission in doing such work.

5. SUPPRESSION OF TENT CATERPILLAR, LEOPARD MOTH AND ELM BEETLE.

Acts of 1914, Chapter 404.

Suppression of Certain Insect Pests in Cities and Towns.

Section 1. The city forester, superintendent or other person having charge of the suppression of gypsy and brown tail moths in each city and town in the commonwealth, or, where there is no such person, the tree warden, may destroy within the limits of his city or town the tent caterpillar, leopard moth and elm beetle, if authorized so to do by the mayor and city council or commission in cities, or by the selectmen in towns.

Owners to be taxed for Work done on Private Land.

SECTION 2. For the purposes of this act the city forester or other officer designated in section one of this act may enter upon private land, and the owners of private land may be taxed for work done under the provisions of section one of this act in the manner provided by sections six and seven of chapter three hundred and eighty-one of the acts of the year nineteen hundred and five and acts in amendment thereof and in addition thereto: *provided, however,* that nothing contained in this act shall require the commonwealth to pay any part of any such expense, other than for the suppression of the gypsy and brown tail moths, that no land shall be assessed under the provisions of this act which has been assessed the maximum amount provided by said sections six and seven and amendments thereof for the suppression of the gypsy and brown tail moths, and that the aggregate assessment on any parcel of private land for the suppression of the tent caterpillar, leopard moth, elm beetle and gypsy and brown tail moths shall not exceed the maximum provided by said sections six and seven and the amendments thereof.

6. INSPECTION CHARGES FORBIDDEN.

GENERAL ACTS OF 1915, CHAPTER 109.

Charges for the Inspection of Live Stock, Dairies or Farm Buildings prohibited.

SECTION 1. It shall be unlawful for any state or municipal inspector or other officer to charge any fee for the inspection of any live stock or of any dairy, barn or stable on any farm in which milk is produced for sale.

7. POULTRY THIEVING.

ACTS OF 1914, CHAPTER 594.

Detention of Persons unlawfully entering Places where Poultry are kept.

SECTION 1. Whoever, with intent to commit larceny, breaks or enters, or enters in the night without breaking any building or enclosure wherein are kept or confined any kind of poultry, may be detained or kept in custody in a convenient place by the owner of the poultry, or by his agent or employee, for not more than twenty-four hours, Sunday excepted, until a complaint can be made against him for the offence and he be taken upon a warrant issued upon such complaint.

Penalty.

SECTION 2. Whoever is convicted of such trespassing or breaking or entering shall be punished by a fine of not more than five hundred dollars or by imprisonment in the house of correction for not more than two years.

GENERAL ACTS OF 1915, CHAPTER 140.

POULTRY-THIEVING POSTERS.

Posters relative to Poultry Thieving may be printed and distributed.

SECTION 1. The secretary of the state board of agriculture shall cause to be printed on durable material, proper for posting in the open air on buildings or otherwise, copies of chapter five hundred and ninety-four of the acts of the year nineteen hundred and fourteen. He shall furnish not more than five copies in any one year without charge to any person applying therefor, and may sell additional copies at not less than the cost thereof, and annually on or before the first day of April shall send one such copy printed on paper to each post office in the commonwealth. All amounts received from the sale of said posters shall be paid into the treasury of the commonwealth.

8. LIABILITY FOR INJURIES TO FARM LABOR.

ACTS OF 1911, CHAPTER 751, PART I.

Damages for Personal Injury.

SECTION 1. In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed the risk of the injury.

Law not to apply in Certain Cases.

SECTION 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers (see pages 163, 164, 165).

VII. OPINIONS OF THE ATTORNEY-GENERAL.

1. AGRICULTURAL AND HORTICULTURAL SOCIETIES.

Election of Delegate to Board of Agriculture.

[1 Opinions Attorney-General, 406.]

At a meeting of the Hampden Agricultural Society, at which proceedings were held for the election of a member of the State Board of Agriculture, the balloting resulted as follows: the whole number of votes cast was 46, of which B had 41, F 4 and P 1. Of the votes cast for B, 39 were cast by proxy.

There being no provision in the charter or by-laws of the society regulating the mode of voting by proxy, or conferring the right so to vote, no member had such right; and since no quorum voted, the votes cast by proxy being thrown out, no person was duly elected by said society as a member of the State Board of Agriculture.

Right to Representation on Board of Agriculture.

[1 Opinions Attorney-General, 90.]

The right of an agricultural society to representation in the Board of Agriculture in any year depends on its title to receive a bounty that year.

A society's title to bounty and to representation is to be determined by its returns between January 10 and the first Wednesday of February each year.

A society is not entitled to a bounty in any year unless it has awarded and paid premiums to the same amount during the preceding year.

The application of a bounty to the general encouragement or improvement of agriculture or manufacture does not by itself entitle a society to a bounty or to representation in the Board.

The requirement of $1,000 invested capital in order to be entitled to a bounty applies to all societies, and means an actually existing invested capital.

The title of a society to representation in the Board accrues year by year, and the membership of a representative of a society terminates when his society ceases to be entitled to representation, though within three years from the time when he took his seat, subject to reinstatement when the society again acquires the right to representation.

VIII. DIGEST OF SUPREME COURT DECISIONS.

1. DRAINAGE OF WET LANDS.

Constitutionality of Drainage Law.

TALBOT *v.* HUDSON.

16 Gray, 417.

[EXTRACT FROM DECISION AT PAGE 428.]

Nor are we without precedent for acts of legislation by which private property has been taken for the purpose of improving land and rendering it fertile and productive. The St. of 1795, c. 62 (R. L., c. 195), for the improvement of meadows, swamps and low lands, recognizes the right of taking private property for the purpose of redeeming lands from the effects of stagnant water and of being overflowed by obstructions in brooks and rivers. This statute, re-enacted by the Rev. Sts., c. 115 (R. L., c. 195), has been long in use, and many proceedings under it have taken place, some of which have passed under the judicial cognizance of this court. But in none has the validity of the statute been doubted or denied.

TURNER *v.* NYE.

154 Mass. 579.

[EXTRACT FROM DECISION AT PAGES 581 AND 582.]

MORTON, J. ". . . we think the plaintiffs misapprehend the constitutional provision which applies to the act in question. The statute was not an exercise on the part of the Legislature of the right of eminent domain, but was enacted under the provision which gives it power 'to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, . . . so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same.' Const. Mass., Part 2, c. 1, Art. 4. . . . Upon this provision also stand the cranberry act, so called (St. 1866, c. 206); the act in regard to draining meadows, swamps, marshes, beaches and low lands, with its authority to commissioners to open the floodgates of a mill, or to erect a temporary dam on the lands of another person and assess the damages upon the proprietors (Pub. Sts., c. 189; see Wurts *v.* Hoagland, 114 U. T. 606).

". . . The mill acts, and these and other like statutes (of which various illustrations might be given), rest upon the principle that property may be so situated or of such a character that the absolute right of the individual owner to a certain extent must yield to or be modified by corresponding rights on the part of other owners, or by what is deemed on the whole to be for the public welfare."[1]

Powers of Drainage Commissioners.

DAY *v.* HURLBURT.

11 Met. 321.

Under the Rev. Sts., c. 115 (R. L., c. 195), commissioners who are appointed to effect improvements in meadows or low lands have no authority to assess damages in favor of any one who is not a party to the proceedings instituted for such improvements, besides those who are mentioned in section 14 of that chapter. Hence when the owners of certain meadows petition the court of common pleas for proceedings to improve the same, and commissioners are appointed who cause a drain to be made whereby water is thrown upon the adjoining meadows of other owners to their injury, those owners have no remedy, under the provisions of that chapter, for the injury so sustained.

Powers of County Commissioners in Relation to Drainage.

SHERMAN *v.* TOBEY.

3 Allen, 7.

Under Gen. Sts., c. 148 (R. L., c. 195), county commissioners have no power to authorize an owner of marshy or wet land to dig a ditch into his neighbor's land and discharge the water upon the same to his injury, but only to authorize him to dig a ditch across the same, or to some outlet where the water may be discharged without injury.

Return of Commissioners under Drainage Act.

WRIGHT *v.* LEONARD.

4 Gray, 150.

A deed of low lands sold for nonpayment of the costs of improvement assessed thereon by commissioners appointed by the court of common pleas, pursuant to Rev. Sts., c. 115 (R. L., c.

[1] See also Proprietors of Mills on Charles River *v.* Proprietors of Mills on Mill Creek and Neponset Rivers, 7 Pick. 207.

195), passes no title, unless the return of the commissioners to the court shows the appointment of the collector by whom the deed was made.

2. DOG DAMAGES.

Liability for Injuries by Dog. Constitutionality of Dog Law.

JOHNSON *v.* GRISWOLD.

179 Mass. 580.

In St. 1889, c. 454 (R. L., c. 102, § 151 *ff.*), giving damages for sheep killed or injured by dogs, section 1 provides that when the damages are appraised the county treasurer shall submit the certificate of damages to the county commissioners, who within thirty days shall examine the bill for damages and make such investigation as they think proper, and issue an order upon the county treasurer for all or any part of the damage. *Held*, that the requirement in regard to the time of the examination is for the benefit of persons claiming damages, and, in the absence of a request by an interested party for an early examination, is only directory, and the failure of the commissioners to act within thirty days does not render their subsequent action in favor of an injured party invalid.

Under St. 1889, c. 454 (R. L., c. 102, § 151 *ff.*), giving damages for sheep killed or injured by dogs, the return under section 1 of a certificate of damages which contains a slight inaccuracy as to the ownership of the sheep but complies with the essential requirement of an oath as a preliminary to the appraisal, and which contains enough to identify the proceedings and justify the introduction of oral testimony to correct the error as to the title, does not leave the case as if there were no certificate, but satisfies the statutory requirement that a certificate shall be returned.

St. 1889, c. 454 (R. L., c. 102, § 151 *ff.*), and St. 1894, c. 309 (R. L., c. 102, § 155), giving damages for sheep killed or injured by dogs, are constitutional.

Dog Damage done to Sheep. Liability of Owner to County. Measure of Damages.

WORCESTER *v.* ASHWORTH.

160 Mass. 186.

The owner of a dog engaged with other dogs in doing damage to sheep is liable to the county, under Pub. Sts., c. 102, § 106 (R. L., c. 102, § 162), for all the damages so done, and not alone

for that part done by his own dog; and it makes no difference that one of such dogs belonged to the owner of the sheep.

In an action by a county, under Pub. Sts., c. 102, § 106 (R. L., c. 102, § 162), as qualified by St. 1889, c. 454, to recover of the owner of a dog for the damages done by the dog to the sheep, the assessment of damages by the county commissioners is not conclusive, but the defendant is entitled to show that the amount awarded by them is excessive.

Right to Reimbursement for Injury by Dogs.

OSBORN *v.* SELECTMEN OF LENOX.

2 Allen, 207.

Under Gen. Sts., c. 88, § 64 (R. L., c. 102, § 151), one who suffers loss by reason of the worrying, maiming or killing of his horse by dogs is, upon proof thereof, entitled to an order from the selectmen of the town wherein the damage is done, upon the treasurer of the town, for the amount of his loss, to be paid from the fund created by taxes on dogs according to the provisions of that statute; and if the selectmen refuse to draw such order, upon proof of the facts, a writ of mandamus will be granted ordering them to do so.

Right to kill Dog doing Damage.

NESBETT *v.* WILBUR.

177 Mass. 200.

In an action for killing a dog which was engaged in killing the defendant's hens on the defendant's premises, the judge having found that the defendant rightly believed that there was no other way to save them than to kill the dog, and that he was justified in so doing; a request for a ruling that Pub. Sts., c. 102, § 94 (R. L., c. 102, § 147), giving a right to any person to kill a dog found out of the enclosure or immediate care of its owner, worrying neat cattle, sheep, or lambs, takes away the rights of the defendant at common law, and that not having complied with the statute the defendant is liable, is rightly refused.

Liability of Owner or Keeper for Damages by Dog.

HATHAWAY *v.* TINKHAM.

148 Mass. 85.

[PART OF REPORTER'S HEADNOTE.]

The owner or keeper of a dog is liable, under the Pub. Sts., c. 102, § 93 (R. L., c. 102, § 146), for an injury done by it to a person in the exercise of due care, although such injury was done in play, and without any vicious intent on the part of the dog.

BOULESTER *v.* PARSONS.

161 Mass. 182.

The leading of a horse behind a wagon on a country road is not such contributory negligence as will preclude the owner from maintaining an action, under the Pub. Sts., c. 102, § 93 (R. L., c. 102, § 146), against the owner of a dog by whom the horse is bitten while being so led.

SHERMAN *v.* FAVOUR.

1 Allen, 191.

The keeper of a dog is liable, under the Rev. Sts., c. 58, § 13 (R. L., c. 102, § 146), for double the amount of damages sustained in consequence of a sudden attack by the dog upon the plaintiff's horse, and barking and leaping at the horse's head, thereby frightening him and rendering him unmanageable.

BREWER ET AL. *v.* CROSBY.

11 Gray, 29.

[PART OF REPORTER'S HEADNOTE.]

The remedy given by the Rev. Sts., c. 58, § 13 (R. L., c. 102, § 146), to "any person injured" by a dog against its owner or keeper includes injuries to property.

BUDDINGTON *v.* SHEARER ET AL.

20 Pick. 477.

In an action of trespass, upon Rev. Sts., c. 58, § 13 (R. L., c. 102, § 146), which provides that every owner or keeper of any dog shall forfeit to any person injured by such dog double the amount of damages sustained by him . . . where the injury was

done by two dogs together, belonging to several owners, it was *held* that each owner was liable only for the damage done by his own dog, and not for the whole damage done by the two dogs.

Liability for Loss of Services caused by Dog Bite.

McCarthy *v.* Guild.

12 Met. 291.

The owner of a dog that injures a minor child so that the parent, by reason of such injury, loses the child's services, and is put to expenses for his cure, is liable to the parent, under Rev. Sts., c. 58, § 13 (R. L., c. 102, § 146), for double the damages by him thus sustained.

Owner's Knowledge of Propensities of Dog. Damages.

Pressey *v.* Wirth.

3 Allen, 191.

In an action under Rev. Sts., c. 58, § 13 (R. L., c. 102, § 146), to recover double the amount of damages sustained from the bite of a dog, it is not necessary to prove that the owner knew of the vicious character of his dog, or that the dog was accustomed to bite; and the defendant has no ground of exception to an instruction to the jury, that, in case they should find for the plaintiff, they should first compute his damages on the principle of exact and literal compensation for his pain and suffering, and then double the amount.

Validity of Town By-laws licensing Dogs.

Commonwealth *v.* Dow.

10 Met. 382.

A by-law of a town, made under Rev. Sts., c. 58, § 10, concerning the licensing, regulating and restraining of dogs going at large within the town, will be construed to apply only to dogs owned or kept in the town, although in its terms it applies "to any person permitting his dog to go at large within the town;" and if it is otherwise valid it may be enforced against the owner or keeper of a dog within the town.

The same section in a by-law of a town imposed a penalty of $10 on any person permitting his dog to go at large in the town, unless the dog should be licensed to go at large, and should wear a collar with the name of the owner or keeper, and the word

"licensed" distinctly marked thereon; and the further penalty of $10 if said dog should wear a collar without license. *Held*, that although the latter part of this section might be repugnant to the Rev. Sts., c. 58, § 12 (R. L., c. 102, § 143), and therefore void, yet that the former part was valid, and that the penalty thereby imposed was recoverable of a person who permitted his dog to go at large without being licensed.

The penalties, imposed by the by-laws of the town of New Bedford in relation to dogs, may be recovered by complaint before the police court of that town.

A dog is "going at large" in a town if he be loose and following the person who has charge of him through the streets of the town at such a distance that he cannot exercise a control over the dog which will prevent his doing mischief.

3. SALES AND MARKETING.

Sale of Oats and Meal.

EATON *v.* KEGAN.

114 Mass. 433.

By the Gen. Sts., c. 49, § 63 (R. L., c. 57, § 25), sales of oats and meal must be by the bushel, and an action cannot be maintained for their price if sold by the bag.

Slaughter of Calves under Four Weeks Old.

COMMONWEALTH *v.* RAYMOND.

97 Mass. 567.

In an indictment under the St. of 1866, c. 253, § 1 (R. L., c. 56, § 74), for killing, for the purpose of sale, a calf less than four weeks old it is not necessary to allege, nor in support of the charge is it necessary at the trial to prove, that the defendant knew that the calf was less than four weeks old; nor that he intended to sell the veal in this Commonwealth or to an inhabitant thereof; nor what use the purchaser intended to make of the veal.

In an indictment under the St. of 1866, c. 253, § 1 (R. L., c. 56, § 74), the words "with intent to sell," are equivalent to the words "for the purpose of sale."

Sale of Cider. Word "Makers."

COMMONWEALTH *v.* BOYDEN.

183 Mass. 1.

The word "makers" in St. 1894, c. 489, § 1 (R. L., c. 100, § 1), includes both farmers and manufacturers, and neither can sell cider without a license if it contains more than three per cent of alcohol, measured in the manner provided by statute.

Right of City to require Permits from Marketmen.

COMMONWEALTH *v.* CLAY.

(*Decided, 1916.*)

The city of Salem may require a permit, and the payment of a fee thereunder, from persons desiring to sell produce in the public market of said city, before they may occupy a stand in said market.

4. FENCES AND FENCE VIEWERS.

Obligations of Citizens to make and repair Fences.

RUST *v.* LOW AND STANWOOD.

6 Mass. 90.

The statutes made by the Legislature of the Commonwealth are the foundation of all the obligations imposed on the citizens by law to make and repair fences.

The tenant of a close is not obliged to fence, but against cattle, which are rightfully on the adjoining land.

Liability of Owner of Unenclosed Land for Line Fence.

FAY *v.* ELLIOTT.

154 Mass. 588.

The owner of unenclosed land, who has leased the same and does not occupy it, is not liable, under the Pub. Sts., c. 33 (R. L., c. 33), to the owner of adjoining land for double the expense of building a division fence and the fees of the fence viewers.

Right of Public on Highway. Liability of Owner for Straying Cattle.

STACKPOLE *v.* HEALY.

16 Mass. 33.

The public have no right in a highway, but a right to pass and repass thereon; they cannot, therefore, justify turning their cattle thereon for the purpose of grazing.

And if cattle, so on the highway, for the purpose of grazing, escape into the adjoining close, the owner of the cattle cannot avail himself of the insufficiency of the fences in excuse of the trespass.

Statute Liability for Building of Line Fence. Duty of Fence Viewers.

O'MALLEY *v.* MEYER.

221 Mass. 198.

Upon a complaint of a landowner made to fence viewers under R. L., c. 33, where the erection of a division fence is desired, the fence viewers, if their award is to have any validity as the basis of a cause of action, must decide not only that a fence is necessary, but also what part of the fence each landowner is to construct. In the absence of a decision as to such apportionment a landowner who, after the fence viewers determined that a division fence was necessary, built the whole of it himself cannot maintain an action of contract against the owner of the adjoining land to recover double the value of one-half of the fence he has built, his rights being governed and limited by the statute.

Duty of Landowner to maintain Fence.

LITTLE *v.* LOTHROP.

5 Greenleaf, 356 (Maine).

Where there is no prescription, agreement or assignment under the statute, whereby the owner of land is bound to maintain a fence, no occupant is obliged to fence against an adjoining close; but in such case, there being no fence, each owner is bound at his peril to keep his cattle on his own close.

Where a tenant is bound by prescription, agreement or assignment under the statute to maintain a fence against an adjoining close, it is only against such cattle as are rightfully on that close;

and in such case, if the fence be not in fact made, the owner of either close, thus adjoining, may distrain the cattle escaping from the adjoining close and not rightfully there.

Liability of Landowner to pay for Share of Partition Fence.

FIELD *v.* THE PROPRIETORS OF COMMON AND UNDIVIDED LAND IN NANTUCKET.

1 Cushing, 11.

[PART OF REPORTER'S HEADNOTE.]

The liability of the owner or occupant of land which has lain unenclosed, on enclosing or depasturing the same, to pay for the one-half of a partition fence, under the Rev. Sts., c. 19, § 12 (R. L., c. 33, § 12), attaches immediately upon such enclosing or depasturing.

The right of an owner, who has erected a partition fence, to recover the value of one-half thereof against the owner of adjoining land is complete by the commencement of proceedings to have the value of such half ascertained by fence viewers, and cannot be defeated by a sale of the land, and a notice by the purchaser, that he does not intend to occupy or improve or enclose it, subsequent to the application to the fence viewers, and notice of such application by them to the original owner, though previous to any further proceedings by them.

Prescriptive Obligation to maintain Fence.

BINNEY *v.* THE PROPRIETORS OF THE COMMON AND UNDIVIDED LANDS IN HULL.

5 Pick. 503.

Evidence that the plaintiff and his ancestors had for fifty-six years maintained a partition fence between his land and that of the defendants; that fifty-six years ago the fence was an old one, and that at that time the plaintiff's ancestor, being owner of the land, said it had always been maintained by himself and his ancestors, was held sufficient to support a plea of a prescriptive obligation on the plaintiff to maintain it.

A prescriptive obligation on the owner of land to maintain a partition fence is not destroyed by his becoming a tenant in common of the adjoining land.

Liability of Owner in Trespass for Escaping Cattle.

THAYER *v.* ARNOLD.

4 Met. 589.

Where a party is not bound by prescription, agreement or assignment of fence viewers to maintain a fence between his land and that of an adjoining owner he may sustain an action of trespass *quare clausum fregit* against the adjoining owner whose cattle escape into his land. The common law on this point is not altered by the statutes of this Commonwealth.

Liability of Owner of Cattle straying from Highway on Unfenced Land.

HARTFORD *v.* BRADY.

114 Mass. 466.

When cattle properly driven upon the highway escape upon unfenced adjoining land their owner is not liable therefor if he makes reasonable effort to remove them and to prevent damage.

Right of Landowner to place Fence on Adjoining Land.

NEWELL *v.* HILL.

2 Met. 180.

An occupant of land, who is bound to maintain a fence between his own and an adjoining enclosure, may place half of a fence, of reasonable dimensions, on the land of the adjoining owner. And he may cut half of a ditch on the land of such owner when a ditch is proper for a partition fence.

Suitable Fence for Railroad. Liability of Company for Sheep straying on Track.

EAMES *v.* SALEM & LOWELL R.R. CO.

98 Mass. 560.

The "suitable" fences which a railroad corporation is required by the Gen. Sts., c. 63, § 43 (St. 1846, c. 271), to erect and maintain on both sides of the railroad need not of necessity be such fences as are required to be maintained by owners of adjoining improved lands, and described in the Gen. Sts., c. 25, § 1 (R. L., c. 33, § 1), as "legal and sufficient."

If the owner of sheep suffers them to be unlawfully on land from which they stray through an unsuitable fence to the track

of an adjoining railroad where they are killed by a passenger train, the railroad corporation is not liable in damages, although the fence was one which it was bound to make and maintain suitably.

If the owner of sheep negligently suffers them to stray on a railroad where they are killed by a passing train, the railroad corporation is not liable in damages.

Recovery for Partition Fence. Meaning of Water Fence.

LAMB *v.* HICKS.

11 Met. 496.

In an action on the Rev. Sts., c. 19, § 6 (R. L., c. 33, § 6), to recover double the value of a partition fence erected by the plaintiff, after the defendant's refusal to erect it, it is necessary to prove that the fence viewers gave the defendant notice of their meeting before they adjudged the fence sufficient and appraised the value thereof. But as such adjudication and appraisement are one transaction, and are to be made at the same time, it is not necessary that the fence viewers should give the defendant a separate and distinct notice of the two purposes of their meeting.

When a plaintiff, who has erected a fence which the defendant has refused to erect, demands of the defendant double the sum ascertained and certified by the fence viewers as the value of such fence, and also demands the fence viewers' fees, which are not legally taxed, the demand for each item is in its nature several, and the demand for the fees does not render void the demand for the other sum.

A partition fence on land that is covered, a part of the year, with the waters of an artificial mill pond, but is occupied and used as pasture or mowing land during another part of the year, is not a water fence within the meaning of the Rev. Sts., c. 19, §§ 9, 14.

Authority of Fence Viewers to assign Portions of Fence.

SEARS *v.* INHABITANTS OF CHARLEMONT.

6 Allen, 437.

Under a complaint that a fence is out of repair, fence viewers have no authority to assign to each of the owners of adjoining land his respective share of the fence, and to direct the building thereof within a specified time.

No action lies to recover upon an award of fence viewers, under Gen. Sts., c. 25, §§ 3, 4, unless they have previously adjudicated that the existing fence was insufficient and illegal, and that the fence which the plaintiff has rebuilt is sufficient.

Enforcement of Award of Fence Viewers.

KENNEDY *v.* OWEN.

134 Mass. 226.

The remedy provided by the Gen. Sts., c. 25, § 4, for enforcing payment of an award of fence viewers is applicable only to a case where the duty of maintaining the fence is required by the statute, and does not apply to a case where such duty arises from the acceptance of a deed containing a condition to maintain it.

Fence Line to be adjudicated by Fence Viewers.

KENNEDY *v.* OWEN.

131 Mass. 431.

[PART OF REPORTER'S HEADNOTE.]

An action on the Gen. Sts., c. 25, § 4 (R. L., c. 33, § 4), to recover double the value of a partition fence, rebuilt by the plaintiff, and double the amount of the fees of the fence viewers for their services in relation thereto, cannot be maintained unless the fence is built upon the line which divides the premises of the parties, if this is known and undisputed; and in the absence of any adjudication by the fence viewers, under the St. of 1863, c. 190, designating the line on which the fence should be built, the line adopted by the plaintiff is not conclusively binding upon the defendant.

Validity of Partial Assignment of Fence Line by Fence Viewers.

ALGER *v.* POOL.

11 Cush. 450.

An assignment by fence viewers under Rev. Sts., c. 19, § 5 (R. L., c. 33, § 5), of only a part of a continuous line of partition fence is not for that reason invalid, neither party at the time requesting that the whole line be divided.

After such assignment duly made, the obligations of the parties are fixed to maintain the fence accordingly, and cannot be changed, without consent, by a subsequent view and division by the fence owners of the whole continuous line of partition fence.

Requirement of Notice by Fence Viewers. Liability of Owners of Common Field.

SCOTT *v.* DICKINSON.

14 Pick. 276.

When in pursuance of the provisions of St. 1785, c. 52 (R. L., c. 33), regulating the erection of fences, the plaintiff had, in consequence of the neglect of the defendant, erected the portion of the fence between their lands which was assigned to the defendant by the fence viewers, and the fence viewers afterwards, upon the application of the plaintiff, but without notice to the defendant, appraised the value of this portion and ascertained the amount of their fees, it was held, in an action brought by the plaintiff under the statute to recover double the value of such valuation, that such appraisement was void as against the defendant, although the statute does not, expressly, require notice thereof to be given to the defendant.

It seems that land which has lain in a common field *de facto* for a series of years cannot be excluded therefrom merely by an allotment made in pursuance of a vote of the proprietors of the general field.

It seems, also, that under St. 1785, c. 52 (R. L., c. 33), the proprietors of a common field, in their corporate capacity, or as tenants in common and not the individual proprietors holding portions of the common field in severalty, are liable, so far as regards the owner of lands adjoining the common field, to the duty of maintaining the partition fence between such portions of the common field and such adjoining land.

Private Nuisance. "Adjoining Property." Statute. Action.

SPAULDING *v.* SMITH.

162 Mass. 543.

The owner of land on one side extending to the center of a highway cannot, under St. 1887, c. 348, maintain an action against an owner of land on the opposite side and extending to the center of the same highway for maliciously maintaining, on the line of the highway, opposite the plaintiff's land, a fence unnecessarily exceeding 6 feet in height for the purpose of annoying the plaintiff.

5. FIELD DRIVERS AND POUND KEEPERS.

Right of Field Driver to take Oxen going at Large.

DEAN *v.* LINDSEY.

16 Gray, 265.

A field driver who takes oxen going at large in a public highway without a keeper, with the intention of driving them to the town pound, and, before driving them to the pound, drives them into his own yard, goes a third of a mile to find the owner, and having found him says to him, "I have taken two of your oxen and put them in my yard, and if you don't come after them I shall drive them to the pound," is not liable to the owner for a conversion of the cattle.

Right of Field Driver. Liability of Owner depasturing Adjacent Highway.

PARKER *v.* JONES.

1 Allen, 270.

The act of a field driver is not necessarily unlawful, although in taking an animal to the pound he drives it first upon the owner's premises.

The owner of land adjoining a highway, and who owns to the center thereof, may depasture his land in the highway, but he is bound, like all other persons, to prevent his cattle from going at large therein without being under the care of a keeper.

Authority of Field Driver. Requirements of Notice.

PHILLIPS *v.* BRISTOL.

131 Mass. 426.

A field driver cannot at the same time distrain and impound cattle for both causes prescribed by the Gen. Sts., c. 25 (R. L., c. 33), — for going at large in the highway without a keeper, and for doing damage on private lands.

If one cause of the impounding of cattle by a field driver is the damage done by them to the land of A, a notice by the field driver to the owner of the cattle, describing them and stating that they were impounded "for being at large out of enclosure in the highway, said cattle delivered to me in said highway by the agent of A," and that the damage to A, together with the

fees of the field driver and pound keeper, amounted to a certain sum, is not a sufficient notice under the Gen. Sts., c. 25, § 29 (R. L., c. 33, § 31).

WILD *v.* SKINNER.

23 Pick. 251.

Under Rev. Sts., c. 19, § 22 (R. L., c. 33, § 22), requiring field drivers to take up and impound at any time cattle going at large in the highway without a keeper, a field driver is authorized to impound cattle so going at large on Sunday, the action of debt to which the owner is subjected by the statute in such case being merely a cumulative remedy.

The field driver in such case is not bound, under Rev. Sts., c. 113, § 6 (R. L., c. 33, § 29), to leave with the pound keeper a memorandum stating the cause of impounding and the damages demanded, this being requisite only where cattle are impounded *damage feasant.*

If the owner of the cattle replevy them within twenty-four hours after they have been impounded he cannot afterwards object that no notice of such impounding was given him in conformity with the provision of Rev. Sts., c. 113, § 8 (R. L., c. 33, § 31).

COFFIN *v.* VINCENT.

12 Cush. 98.

[PART OF REPORTER'S HEADNOTE.]

To prove the contents of a notice posted up by a field driver who had distrained sheep for running at large, a witness who read it may testify to its contents, the notice being lost, and may refresh his recollection by referring to a proper form of such a notice, which, although not made by himself, he had compared with the notice posted up and found to correspond.

In an action against a field driver who had impounded sheep for running at large contrary to law, an instruction to the jury that if they were satisfied that the notice of the impounding was posted up within twenty-four hours in some public place by the defendant, containing a description of the sheep and a statement of the time, place and cause of impounding, they might find a verdict for the defendant, sufficiently imports that the burden of proof is upon the defendant to show that the notice posted up contained a statement of some particular specific cause known to the law for which the beasts were taken up, especially if more

specific instructions on this point are not requested by the plaintiff at the trial.

A field driver who lawfully impounds sheep running at large contrary to law, and duly posts a notice thereof, is not liable to the owner of the beasts as a trespasser *ab initio*, although he fails either to restore the sheep or sell them according to law, through the default of the pound keeper or other person, or from the insufficiency of the pound, the animals being lawfully in the pound keeper's custody.

Bruce *v.* Holden.

21 Pick. 187.

[Part of Reporter's Headnote.]

When a field driver impounds beasts for being at large in the highway it is his duty to leave with the pound keeper a memorandum or certificate of the cause of impounding and of his fees or expenses, and such certificate is an official act, and in an action of trespass against him for taking the beasts is *prima facie* evidence in his favor of the facts stated in it.

Cleverly *v.* Towle.

3 Allen, 39.

A written notice, posted up and published in a newspaper by a field driver who has impounded beasts going at large in a public highway, which states that the beasts were "going at large, and without a helper," sets forth a sufficient cause of impounding under Rev. Sts., c. 113, § 9 (R. L., c. 33, § 32).

Sanderson *v.* Lawrence.

2 Gray, 178.

A notice in writing, given by a field driver to the owner of beasts impounded for going at large in the highway, which states that the beasts "were running at large, and were trespassing upon the premises of other individuals," does not state a sufficient cause of impounding, as required by Rev. Sts., c. 113, § 8 (R. L., c. 33, § 31).

Requirements of Notice from Field Driver to Owner of Beasts impounded. Meaning of Highway.

PICKARD *v.* HOWE.

12 Met. 198.

The notice which a person who impounds beasts is required by Rev. Sts., c. 113, § 8, to give to the owner of them within twenty-four hours need not state the hour of the day when they were impounded. And proof that notice was left in the hands of one of the owner's family, at his dwelling house, is sufficient to authorize a jury to find that it was left at his place of abode.

A field driver who impounds beasts for going at large on a public highway is not bound by Rev. Sts., c. 113, § 6 (R. L., c. 33, § 29), to leave with the pound keeper a memorandum stating the cause of the impounding and the sum that he demands from the owner.

It is no objection to the notice required by Rev. Sts., c. 113, § 8 (R. L., c. 33, § 31), to be given by a field driver to the owner of impounded cattle, that the field driver's name is signed by another person, if it be done at the field driver's request.

In an action of replevin brought against a field driver by the owner of the cattle impounded by him for going at large, the defendant may show in evidence not only that he gave the plaintiff the notice required by Rev. Sts., c. 113, § 8 (R. L., c. 33, § 29), but also that he posted notices according to the provisions of section 9. But the plaintiff cannot give evidence that the cattle were not suitably provided for or were ill treated in the pound.

A notice given by a field driver to the owner of cattle, that they are impounded for going at large on the public highway, is *prima facie* evidence that they were so at large, and puts on the owner the burden of proving the contrary.

A turnpike is a public highway within the meaning of Rev. Sts., c. 19, § 22, which require field drivers to take up and impound cattle going at large in the public highways.

Requirements of Notice by Field Driver to Pound Keeper.

SHERMAN *v.* BRAMAN.

13 Met. 407.

B took up beasts doing damage on his land, and impounded them in his own enclosure for several hours, and then drove them toward the town pound, and delivered them, in the highway near

the pound, to the pound keeper (who was also a field driver) as cattle taken doing damage, but did not leave with the pound keeper a written memorandum, as required by the Rev. Sts., c. 113, § 6 (R. L., c. 33, § 29), stating the cause of impounding and the sum that he demanded for the damage done. The pound keeper put the beasts into the pound and gave the owner the notice required to be given by field drivers when they impound beasts taken up for going at large contrary to law. *Held*, that B became a trespasser *ab initio* by failing to leave with the pound keeper the written memorandum required by law, and was answerable to the owner of the beasts in an action of trespass for taking, driving away and detaining them.

Requirements of Written Notice by Distrainer.

NEWHOUSE *v.* HATCH.

126 Mass. 364.

A person distraining cattle doing damage on his land impounded them in the town pound and handed the keeper the following written memorandum, with his name and a date upon the paper: "Two dollars for damages and three dollars and fifty cents for fees." *Held*, that the memorandum was defective in not stating the cause of impounding, as required by Gen. Sts., c. 25, § 27 (R. L., c. 33, § 29), and that such person was a trespasser *ab initio*.

Waiver of Notice of Impounding. Action of Replevin, when commenced.

FIELD *v.* JACOBS.

12 Met. 118.

When the owner of cattle that are impounded by a field driver for going at large contrary to law commences an action of replevin against the field driver within twenty-four hours after they are impounded, he waives the notice which the Rev. Sts., c. 113, § 8 (R. L., c. 33, § 31), require the field driver to give him, and cannot rely, in support of his action, on the want of such notice.

If a writ to replevy impounded cattle is filled up within twenty-four hours after they are impounded, with the intent of the plaintiff, at all events, to have it served, whether the defendant shall give him notice of the impounding within twenty-four hours or not, the action of replevin is commenced when the writ

is filled up, although it is not served, nor given to an officer for service, and no replevin bond is executed, until after the expiration of twenty-four hours from the time of the impounding.

Liability of Person distraining Cattle.

MERRICK *v.* WORK.

10 Allen, 544.

If beasts doing damage are distrained, and driven to the distrainer's yard till the pound keeper can be called, and then delivered to the latter in the highway, it is the duty of the distrainer to state his demand, and to give notices as required in Gen. Sts., c. 25, §§ 27, 29, 30 (R. L., c. 33, §§ 29, 31, 32), and if he omits to do so he will be liable as a trespasser *ab initio*.

Liability of Pound Keeper to Owner of Beasts impounded.

FOLGER *v.* HINCKLEY.

5 Cushing, 263.

A pound keeper who receives and impounds beasts for going at large, and refuses to deliver them to the owner on demand, unless his fees and those of the field driver are paid, is not liable therefor in an action of replevin.

Action of Replevin for Beasts distrained. Notice. Rights of Owner of Beasts impounded.

COFFIN *v.* FIELD.

7 Cushing, 355.

The action of replevin given by the Rev. Sts., c. 113, § 17, to one whose beasts are unlawfully distrained or impounded does not exclude all other remedies at common law; trespass will still lie.

Actual knowledge by the owner of beasts impounded of the impounding thereof is not equivalent to the written notice required by the Rev. Sts., c. 113, § 8 (R. L., c. 33, § 31).

The owner of beasts impounded does not waive the right to maintain trespass against the field driver by whom the beasts were taken and impounded, on the ground of irregularities or omissions in their proceedings, by paying the fees of the field driver and pound keeper; nor by declaring to a third person, after the commencement of the action, that he should require the defendants to prove that the place where they took the beasts was a public highway.

Impounding Cattle.

CONNERS *v.* LOKER.

134 Mass. 510.

The mere driving cows off a person's land into the highway, and detaining them there until the owner comes and takes them away, and then demanding a sum of money as damages, is not, as matter of law, an impounding of the cows.

Cattle, when under Control of Keeper. Meaning of Keeper.

BRUCE *v.* WHITE.

4 Gray, 345.

Cattle in a highway, not actually under the efficient control of a keeper, are "going at large in the highways, and not under the care of a keeper," within the meaning of the Rev. Sts., c. 19, § 22 (R. L., c. 33, § 22), and may be taken up and impounded by a field driver, although they have been entrusted by their owner to a servant, with other cattle, and have only left the drove a mile before reaching the pasture, and turned into a different road, also leading to the pasture, over which they have sometimes been driven, and there remain feeding, and the servant returns in less than an hour to the place where he lost them.

A person who finds cattle at large in the highway not under the care of a keeper, and drives them along the highway until he finds a field driver, is not a keeper within the meaning of Rev. Sts., c. 19, § 22 (R. L., c. 33, § 22), and the field driver may lawfully receive and impound them.

Pound Breach.

COMMONWEALTH *v.* BEALE.

5 Pick. 514.

Upon an indictment for pound breach the illegality of the distress cannot be shown in the defence.

The penalties of St. 1788, c. 65, § 6 (R. L., c. 33, § 38), for pound breach, or otherwise delivering creatures from a pound, are extended to cases of creatures impounded for going at large contrary to St. 1799, c. 61.

Town Pound, when established.

ANTHONY *v.* ANTHONY.

6 Allen, 408.

A pound keeper may lawfully impound beasts which have been distrained *damage feasant* in a yard furnished and used by the town as a town pound, if the town has furnished and used no other place as a pound, although the inhabitants of the town have passed no vote concerning the same, and taken no action at any town meeting for the purpose of establishing it as a pound.

Validity of Sale at Auction of Impounded Beasts.

SMITH *v.* GATES.

21 Pick. 55.

Under the Rev. Sts., c. 113, §§ 11, 12 (R. L., c. 33, §§ 34, 35), providing that where appraisers are appointed to determine the amount due from the owner of an impounded beast for damages, etc., and the sum found by them to be due is not forthwith paid, the person impounding may cause the beast to be sold by auction, first advertising the sale by posting up a notice thereof twenty-four hours beforehand, it was held that where a beast impounded by a field driver was sold twenty minutes before the expiration of twenty-four hours from the time when the appraisement was completed the sale was invalid, and the field driver a trespasser *ab initio*, although more than twenty-four hours had elapsed from the time of posting up the advertisement; and that it was immaterial, in such case, whether any actual injury had been sustained by the owner of the beast in consequence of this neglect of duty on the part of the field driver or not.

The statute intends that the owner of the beast impounded shall have an opportunity to pay the appraised damages and charges before the posting up of an advertisement for the sale of the beast.

6. OWNERSHIP OF MANURE.

Ownership of Manure by Tenant.

NASON *v.* TOBEY.

182 Mass. 314.

Although manure made in the ordinary course of husbandry belongs to the landlord of a leased farm, and perhaps under some circumstances may belong to him even if made from hay fur-

nished by the tenant, yet, when animals are collected on a farm to a greater number than it is capable of supporting, and are fed there upon purchased food for the purpose of carrying on the milk business, the tenant has a right to some ascertainable proportion of the manure.

FLETCHER *v.* HERRING.

112 Mass. 382.

Manure so made or held as to be the personal property of an outgoing tenant does not necessarily become real estate by being left upon the premises after the expiration of the tenancy.

Title to Manure on Leased Farm.

DANIELS *v.* POND.

21 Pickering, 367.

"The court are of opinion that manure made on a farm, occupied by a tenant at will or for years in the ordinary course of husbandry, consisting of the collections from the stable and barn yard, or of composts formed by an admixture of these with soil or other substances, is, by usage, practice and general understanding, so attached to, and connected with, the realty that in the absence of any express stipulation on the subject an outgoing tenant has no right to recover the manure thus collected or sell it to be removed, and that such removal is a tort for which the landlord may have redress; and such sale will vest no property on the vendee.

"The rule here adopted will not be considered as applying to manure made in a livery stable, or in any manner not connected with agriculture or in a course of husbandry."[1]

7. FARM LABOR.

Workmen's Compensation Act, Farmer. Words "Driver," "Helper," "Farm Laborers."

PATRICK KEANEY'S CASE.

217 Mass. 5.

A farmer carrying on a market garden may procure insurance under the workmen's compensation act covering his "drivers and helpers" employed in the distribution of the produce of the farm

[1] See also Lassell *v.* Reed, 6 Greenleaf (Me.), 222; Needham *v.* Allison, 24 New Hampshire, 355; Sawyer *v.* Twiss, 26 New Hampshire, 345; Fay *v.* Muzzey, 13 Gray, 53; Strong *v.* Doyle, 110 Mass. 92; Collier *v.* Jenks, 19 R. I. 137.

without insuring his other employees who are merely "farm laborers," and this is so whether or not such "drivers and helpers" are "farm laborers," which here was not decided.

An employee on a farm carried on as a market garden, who does the ordinary work of one hired by a farmer to aid in the common incidents of agricultural employment, is neither a "driver" nor a "helper" within the meaning of a policy of employers' liability insurance covering "drivers and helpers" employed in the distribution of the produce of the farm, although occasionally he has driven a team as part of his farm work and in a general sense has helped about the farm.

The provision of the workmen's compensation act, contained in Acts of 1911, c. 751, Part I, § 2, that the provisions of section 1, taking away certain defences in an action for personal injuries by an employer, shall not apply to actions by farm laborers, includes the farm laborers of all farmers so far as concerns farming operations, whether the farmers carry on other business or not.

Negligence, Employers' Liability. Words "Farm Laborer," "Employer Himself."

ROWLEY *v.* ELLIS.

197 Mass. 391.

Under § 79 of R. L., c. 106 (Acts of 1911, c. 751), which provides that "the provisions of the eight preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees," a foreman in charge of one of four farms belonging to the same owner, under the direction of a superintendent who visits each farm once a day, such foreman receiving a salary of $35 a month, and having sixteen or eighteen men under him, is a farm laborer within the meaning of the statute, and, if he is killed without conscious suffering by the violent breaking of the sprocket chain of a cutting machine when he is showing the workmen how to feed corn stalks into the machine, his widow cannot recover from his employer for his death under the provisions of section 73 of the same chapter, although she shows that the accident was caused by the sprocket around which the chain passed having become worn by use, that the duty of inspecting and caring for the safety of the cutting machine was entrusted to the superintendent, and that the superintendent was negligent in not discovering the defect and causing the necessary repairs to be made.

"The negligence of an employer himself," for which he is liable under R. L., c. 106, § 73 (Acts of 1911, c. 751), if it results in the instant death or death without conscious suffering of an employee, does not include the negligence of one to whom the employer has delegated the duty of maintaining machinery in a safe condition, for which, among other things, the employer is made liable by the succeeding words of the same section.

Employer's Liability for Injury to Farm Hand. Assumption of Risk.

SMITH *v.* LINCOLN.

198 Mass. 388.

At the trial of an action of tort against a farmer by one employed by him as a farm hand, who sought recovery for personal injuries received by him by falling into a silo in the defendant's barn, it appeared that the plaintiff was employed at about noon, and, at once after his employment, and before he had inspected the premises, was directed to go to defendant's barn and clean certain stalls which were at the left of the door; that he opened the door to the barn and entered and closed the door behind him because he thought that the defendant wanted it kept so; that the barn was then as dark as on a dark night, and, in proceeding to the stalls which he was to clean, he fell into the silo, which was directly in his path; that the opening to the silo was about 3 feet wide and, if he had left the door open, he would have been able to see and avoid it. *Held*, that the plaintiff had assumed the risk of the injury which he received.

8. CRANBERRY BOGS.

Right of Cranberry Grower to build Dam on Nonnavigable Stream.

HOWES *v.* GRUSH.

131 Mass. 207.

It is within the power of the Legislature to authorize such a use of a stream which is not navigable as will wholly destroy a public fishery.

In an action by the owner of a cranberry meadow against a fish committee of a town for tearing away the plaintiff's dam, built under the provisions of the St. of 1866, c. 206 (R. L., c. 196, § 39), across a stream not navigable, the defendant asked the judge to rule that if the plaintiff could have constructed his dam

or meadow so that his use of the water would not injure a public fishery he was bound to do it, and, if he did not, the committee had the right to reduce the dam to the point necessary to avoid such interference or injury. The judge declined so to rule; but instructed the jury that it was the duty of the plaintiff to use reasonable care, skill and prudence in building and maintaining the dam, in the preparation, by way of grading and otherwise, of his meadow before it was overflowed, and in raising and drawing off the water, so as to do the least injury to the fishery consistent with a reasonable exercise of his right to construct a dam, giving full instructions as to the meaning of the words "reasonable care, skill and prudence;" and that, if the plaintiff so exercised his right, and drew off the water at a proper time and only in a manner necessary for the cultivation of cranberries, the plaintiff was not responsible for injury to the fishery by reason of the spawn of the fish being deposited in shallow water on the meadow and injured by the drawing off of the water; and that, upon such a state of facts, the defendant had no right to remove the dam. *Held*, that the defendant had no ground of exception.

In an action by the owner of a cranberry meadow against a fish committee of a town for tearing away the plaintiff's dam, built under the provisions of St. of 1866, c. 206 (R. L., c. 196, § 39), across a stream not navigable, the defendant requested the judge to rule that if the dam was built, without permission of the town, on land of the town, or under the bridge, the defendant had the right to remove it. The judge declined so to rule, but instructed the jury that the plaintiff had no right to build his dam in the highway with or without the consent of the town, nor to build it on land of the town without the consent of the town; and that, if it was so built, the defendant had the right to remove it. *Held*, that the defendant had no ground of exception.

In an action by the owner of a cranberry bog for the removal of his dam, the jury were instructed not to regard the injury caused by frost and insects, after the date of the writ, as distinct and independent grounds of damage, but that the true measure of damages was the diminution in value of the land for cranberry culture caused by the act of the defendant. *Held*, that the defendant had no ground of exception.

Right to flow Cranberry Bog.

HINCKLEY *v.* NICKERSON.

117 Mass. 213.

Neither the provision of the Gen. Sts., c. 149, § 2 (R. L., c. 196, § 2), that no mill dam shall be erected to the injury of any mill lawfully existing on the same stream, nor the fact of any right acquired for an ancient mill by prescription, prevents the erection, above an existing mill, of a dam, under the St. of 1866, c. 206 (R. L., c. 196, § 39), for the purpose of flowing land appropriated to the cultivation of the cranberry, reasonably adapted to the character of the stream, although its effect may be to modify or disturb somewhat the regularity of the flow of the current.

Under the St. of 1866, c. 206 (R. L., c. 196, § 39), authorizing the maintaining a dam upon an unnavigable stream for the purpose of flowing a cranberry meadow, a person who withdraws for such purpose, and for a reasonable time, the water of a stream by means of a dam is not, if his meadow is not too large to be flowed by the stream, liable to the owner of a similar meadow below upon the same stream who is thereby deprived of sufficient water to flow it for several days during the time when it is equally necessary for each.

Gathering Cranberries on Lord's Day.

COMMONWEALTH *v.* THIE.

190 Mass. 578.

Gathering cranberries on the Lord's day, when there is an unusually large crop but no sudden and unexpected emergency, is not a work of necessity within the meaning of St. 1904, c. 460, § 2.

9. MISCELLANEOUS.

Adverse Possession of Right of Way.

BALL *v.* ALLEN.

216 Mass. 469.

[PART OF REPORTER'S HEADNOTE.]

The owner of a farm, through which the owner of an adjoining farm has a defined right of way, not only may fence the sides of the way, but also may erect and maintain at his own expense such gates or bars across the ends of the way as are reasonably

necessary for his own protection in the pasturage of cattle or other proper use and enjoyment of his own property.

Where a farm is crossed by a defined right of way belonging to the owner of the adjoining farm, it is a matter of common knowledge that bars maintained at the ends of the way by the owner of the servient farm make the use of the way by the owner of the dominant farm more onerous than the maintenance of a gate at each end, and, if the owner of the servient farm removes a gate at one end of the way and substitutes a barway which he has not maintained adversely for twenty years, he can be compelled by a suit in equity brought by the owner of the dominant farm to remove the bars and restore the gate.

The owner of a farm, crossed by a right of way, by maintaining bars across the end of such way for more than twenty years consecutively can acquire a prescriptive right to maintain a barway there instead of a gate.

The owner of a right of way as appurtenant to a certain parcel of land belonging to him has no right to use the right of way for the purpose of access to other land belonging to him, although such other land abuts on the dominant estate.

Keeping Swine within Town Limits.

COMMONWEALTH *v.* RAWSON.

183 Mass. 491.

A by-law of a town, adopted when the town had a board of health having jurisdiction of offensive trades and employment under R. L., c. 75, § 1, providing that no person should keep within the limits of the town more than five swine, exclusive of the offspring of the five less than four months old, is invalid as against a person engaged in the business of keeping swine in that town.

Rights of Officers of Agricultural Societies.

COMMONWEALTH *v.* RUGGLES.

6 Allen, 588.

The officers of an agricultural society have no authority to define and fix bounds, for other purposes than those specially enumerated in the statute, within which no person shall be permitted to enter or pass unless in conformity with their regulations.

The officers of an agricultural society, who have unlawfully fixed and defined bounds for the purpose of exhibiting horses in a

public highway, have no right to obstruct public travel thereon, although there is sufficient room for public travel on the other parts of the highway; and they may be convicted of assault and battery, if without legal process they have arrested a person within such bounds who, when directed to fall back, refused to do so, and without malice or unlawful intent struck the horse of a marshal of the society, although he was wilfully and maliciously in the highway for the purpose of obstructing the exhibition of horses there.

Form of Complaint for Case of Trespass.

COMMONWEALTH *v.* DOUGHERTY.

6 Gray, 349.

[PART OF REPORTER'S HEADNOTE.]

A complaint on St. 1855, c. 457 (R. L., c. 208, § 105), for the malicious destruction of a tree, shrub or vine on the land of another must aver an unlawful entry by the defendant on the land.

List of Officers enforcing Agricultural Laws of Massachusetts.

NAME OF DEPARTMENT.	Executive Officer.	Jurisdiction.
State Board of Agriculture, .	Wilfrid Wheeler, Secretary. Office, 136 State House, Boston.	Bounty to agricultural societies (see page 13). Bounty to poultry societies (see page 21). Premiums to children and youths (see page 22). Special exhibitions (see page 23). Public market act (see page 101). Apple grading law (see page 116).
	H. T. Fernald, State Nursery Inspector. Office, Amherst.	Nursery inspection (see page 24). Blister rust inspection (see page 24).
	B. N. Gates, Inspector of Apiaries. Office, Amherst.	Inspection of apiaries (see page 29).
State Board of Agriculture, jointly with Department of Health.	– –	Reclamation of wet lands (see page 81).
Agricultural Experiment Station.	William P. Brooks, Director. Office, Amherst.	Inspection of commercial fertilizers (see page 32). Inspection of commercial feedstuffs (see page 39).
Board of Commissioners on Fisheries and Game.	George H. Graham, Chairman. Office, 319 State House, Boston.	Game laws (see pages 86, 98, 99, and also "Fish and Game Laws").
Department of Weights and Measures.	Thure Hanson, Commissioner. Office, 194 State House, Boston.	Weights and measures of farm produce (see page 101, and also "Weights and Measure Laws").
Department of Health, . .	Allan J. McLaughlin, Commissioner. Office, 312 State House, Boston.	Sale of meat and provisions (see page 111, and also "Laws relating to Public Health").
State Forester, . . .	F. W. Rane, Forester. Office, 408 State House, Boston.	Forestry laws and suppression of brown-tail and gypsy moths (see page 137, and also "Forestry Laws").
Department of Animal Industry.	L. H. Howard, Commissioner. Office, 138 State House, Boston.	Suppression of contagious diseases in animals (see "Laws relating to Contagious Diseases in Animals").

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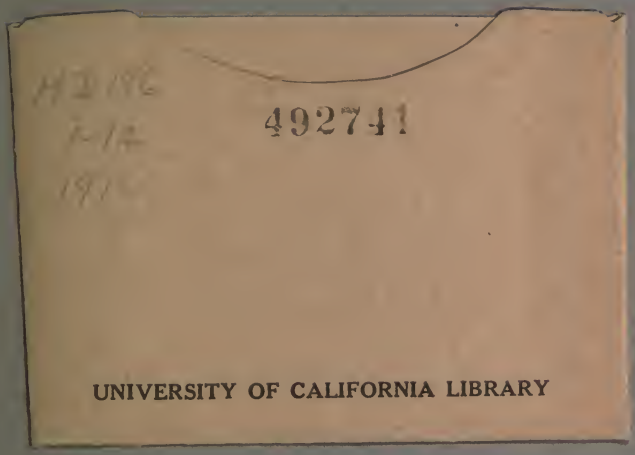
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